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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
HEINS RODRIGUEZ,

PLAINTIFF,

-against-

Case No:
16-CV-5861

CITY OF NEW YORK; POLICE OFFICER ZHENG
ZUOPENG, SHIELD NO. 25461; POLICE OFFICER
ALEN CHEN, SHIELD NO. 28461; SERGEANT
MATTHEW S. STARRANTINO, AND JOHN AND JANE
DOE 1 THROUGH 10, INDIVIDUALLY AND IN THEIR
OFFICIAL CAPACITIES (THE NAMES JOHN AND JANE
DOE) BEING FICTITIOUS, AS THE TRUE NAMES
ARE PRESENTLY UNKNOWN,

DEFENDANTS.

-----X

DATE: July 27, 2018

TIME: 10:15 A.M.

VIDEOTAPED DEPOSITION of the
Defendant, POLICE OFFICER ALEN CHEN, taken
by the Plaintiff, pursuant to a Notice and
to the Federal Rules of Civil Procedure,
held at the offices of Elefterakis,
Elefterakis & Panek, 80 Pine Street, New
York, New York 10005, before Mila Gutman
Azimov, a Notary Public of the State of New
York.

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2 A P P E A R A N C E S:

3

4 ELEFTERAKIS, ELEFTERAKIS & PANEK
Attorneys for the Plaintiff
5 HEINS RODRIGUEZ
80 Pine Street
6 New York, New York 10005
BY: BAREE N. FETT, ESQ.

7

8

9 ZACHARY W. CARTER
CORPORATION COUNSEL
10 NEW YORK CITY LAW DEPARTMENT
Attorneys for the Defendants
11 CITY OF NEW YORK; POLICE OFFICER ZHENG
ZUOPENG, SHIELD NO. 25461; POLICE OFFICER
12 ALEN CHEN, SHIELD NO. 28461; SERGEANT
MATTHEW S. STARRANTINO, AND JOHN AND JANE
13 DOE 1 THROUGH 10
100 Church Street
14 New York, New York 10007
BY: KEVIN KELLY, ESQ.

15

16

ALSO PRESENT:
17 ROBERT HORGAN
Videographer
18 DIAMOND REPORTING & LEGAL VIDEO

19

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2 F E D E R A L S T I P U L A T I O N S

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5 IT IS HEREBY STIPULATED AND AGREED by and
6 between the counsel for the respective
7 parties herein that the sealing, filing and
8 certification of the within deposition be
9 waived; that the original of the deposition
10 may be signed and sworn to by the witness
11 before anyone authorized to administer an
12 oath, with the same effect as if signed
13 before a Judge of the Court; that an
14 unsigned copy of the deposition may be used
15 with the same force and effect as if signed
16 by the witness, 30 days after service of
17 the original & 1 copy of same upon counsel
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that
21 all objections except as to form, are
22 reserved to the time of trial.

23

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THE VIDEOGRAPHER: We are now on the record. The time is 10:16 a.m. on July 27, 2018. My name is Robert Horgan, legal videographer with Diamond Reporting and Legal Video based in Brooklyn, New York.

This is the deposition of Alen Chen taken on behalf of Plaintiff. This deposition is being held at the offices of left Elefterakis, Elefterakis and Panek, 80 Pine Street, New York, New York. In the United States District Court, Eastern District of New York, the caption of the case is Heins Rodriguez, Plaintiff against City of New York et al, defendants. Docket number 16 CV 5861. Will Counsel now please identify themselves, their firms and the parties they represent.

MS. FETT: Baree Fett for the plaintiff, Heins Rodriguez from the firm Elefterakis, Elefterakis and Panek.

1 A. CHEN

2 MR. KELLY: Kevin Kelly, New
3 York City law department for the
4 defendants.

5 THE VIDEOGRAPHER: The Court
6 Reporter is Mila Azimov with Diamond
7 Reporting. Ms. Azimov, please are
8 swear in the witness.

9 A L E N C H E N, called as a witness,
10 having been first duly sworn by a Notary
11 Public of the State of New York, was
12 examined and testified as follows:

13 EXAMINATION BY

14 MS. FETT:

15 Q. Good morning Officer Chen, my
16 name is Baree Fett and I represent the
17 plaintiff Heins Rodriguez in this case.

18 A. Good morning.

19 Q. I'm going to ask you a series
20 of questions today. Before we get started,
21 I'm going to go over some of the ground
22 rules for the deposition. First, because
23 there's a court reporter taking down
24 everything that we are saying, I would ask
25 that you first let me finish my question

1 A. CHEN

2 before you answer it even if you already
3 know the answer. Okay?

4 A. Okay.

5 Q. I also ask that you give all of
6 your responses verbally instead of a nod of
7 the head so that the Court Reporter can
8 take it down. Okay?

9 A. Okay.

10 Q. If, at any time, you don't
11 understand one of my questions, will you
12 let me know?

13 A. Yes.

14 Q. If you don't hear my question,
15 will you let me know?

16 A. Yes.

17 Q. If you don't tell me that you
18 don't understand or you don't hear my
19 question, I'll assume that you understand
20 it; is that fair?

21 A. Yes.

22 Q. You're able to take a break at
23 any time that you want. Just let me know.
24 Okay?

25 A. Okay.

1 A. CHEN

2 Q. If a question is pending,
3 however, I would just ask that you first
4 answer the question before you take a
5 break. Okay?

6 A. Okay.

7 Q. You are here to answer
8 questions to the best of your ability or
9 recollection so I don't want you to guess
10 or speculate. Okay?

11 A. Okay.

12 Q. At any time, if you want to
13 change an answer that you previously gave,
14 just let me know and I'll give you the
15 opportunity. Okay?

16 A. Okay.

17 Q. Once this deposition is over, a
18 transcript will be generated and you will
19 have the opportunity to review the
20 transcript and make any corrections. Okay?

21 A. Okay.

22 Q. Understand that when we go to
23 trial in this case, I will be able to
24 comment on any changes or corrections that
25 you made. Okay?

1 A. CHEN

2 A. Okay.

3 Q. Are you on any medication that
4 may affect your memory?

5 A. No.

6 Q. Have you had any alcohol in the
7 last 24 hours?

8 A. No.

9 Q. Have you used any marijuana in
10 the last 24 hours?

11 A. No.

12 Q. Have you taken any illegal
13 drugs in the last 24 hours?

14 A. No.

15 Q. How much sleep did you get last
16 night?

17 A. Four, five hours.

18 Q. When did you last finish your
19 tour of duty?

20 A. 1805 yesterday.

21 Q. What is 1805 in nonmilitary
22 time?

23 A. 6:05 p.m.

24 Q. What did you do after work?

25 A. I went home.

1 A. CHEN

2 Q. Are you aware that you've taken
3 an oath to tell the truth today?

4 A. Yes.

5 Q. Is there any reason that you
6 won't be able to tell the truth today?

7 A. No.

8 Q. What is your full name?

9 A. Alen C. Chen.

10 Q. What does the C stand for?

11 A. It's an initial.

12 Q. It's not a name?

13 A. No.

14 Q. What's your shield number?

15 A. 28461.

16 Q. And your tax ID?

17 A. 941997.

18 Q. What is your current command?

19 A. 110th Precinct.

20 Q. And your current assignment?

21 A. Summons, summons officer.

22 Q. Is that the same assignment
23 that you had on August 14, 2015?

24 A. Yes.

25 Q. Do you wear glasses or contact

1 A. CHEN

2 lenses?

3 A. Glasses.

4 Q. For what condition do you wear
5 glasses?

6 A. Only at night for driving.

7 Q. Were you prescribed glasses in
8 August of 2015?

9 A. Yes.

10 Q. What did you do to prepare for
11 the deposition today?

12 MR. KELLY: Objection. You can
13 answer.

14 Q. Aside from any conversations
15 with your attorneys, what did you do to
16 prepare for the deposition today?

17 A. Nothing.

18 Q. Did you meet with your
19 attorneys?

20 A. Yes.

21 Q. On how many occasions?

22 A. Two, three times.

23 Q. Do you remember when was the
24 first time that you met with them?

25 A. No, I don't recall.

1

A. CHEN

2

Q. Who did you meet with?

3

A. Zach Berkman and Kevin Kelly.

4

Q. Was there anyone else in the

5

room?

6

A. No.

7

Q. Did you review any documents?

8

A. I don't recall.

9

Q. Did you review any video?

10

A. You mean the first meeting?

11

Q. Yes.

12

A. I don't recall. I'm sorry.

13

Q. That's okay. Do you remember

14

how long the meeting was for, the first

15

one?

16

A. Maybe an hour, two hours.

17

Q. When was the second meeting?

18

A. A few days later.

19

Q. Was that in the month of July?

20

A. I don't recall the date.

21

Q. How long was that meeting?

22

A. Two hours possibly.

23

Q. Who did you meet with?

24

A. Both attorneys.

25

Q. The same two attorneys?

1 A. CHEN
2 A. Yes.
3 Q. Did you review any documents?
4 A. Yes.
5 Q. Which documents did you review?
6 A. The text messages.
7 Q. Anything else?
8 A. The video.
9 Q. Which video did you review?
10 A. The video of the incident and
11 the second video afterwards.
12 Q. How about the third time that
13 you met with your attorneys, when was that?
14 A. Today.
15 Q. How long did you meet with
16 them?
17 A. About 20 minutes.
18 Q. Was anyone else in the room?
19 A. No.
20 Q. Did you review any documents?
21 A. Yes, my memo book.
22 Q. Anything else?
23 A. No.
24 Q. Did you review either of the
25 two videos this morning?

1 A. CHEN

2 A. No.

3 Q. Before meeting with your
4 attorneys the first time, had you ever seen
5 either video before?

6 A. Yes.

7 Q. Which video?

8 A. The video of the incident.

9 Q. Approximately when had you seen
10 that?

11 A. To the best of my recollection,
12 probably two, three months after the actual
13 incident.

14 Q. That was the only time that you
15 had seen it?

16 A. Yes.

17 Q. How about the other video that
18 shows officers in the scene, had you seen
19 that one before meeting with your attorney?

20 A. No.

21 Q. Had you ever given testimony
22 under oath before?

23 A. Yes.

24 Q. When I say under oath, that
25 could be in a deposition like this, civil

1 A. CHEN

2 court, criminal court?

3 A. Yes.

4 Q. On how many occasions?

5 A. Many.

6 Q. More than 20?

7 A. Yes.

8 Q. More than 30?

9 A. Yes.

10 Q. What's your date of
11 appointment?

12 A. June of 2006.

13 Q. How many arrests have you made?

14 A. I can't tell you off the top of
15 my head, maybe roughly 100.

16 Q. Back to the testimony, giving
17 testimony under oath, would you say that
18 you've given testimony more than 50 times?

19 A. Yes.

20 Q. More than 100?

21 A. Yes.

22 Q. Have you ever given testimony
23 at a trial in a civil lawsuit?

24 A. No.

25 Q. Have you ever given deposition

1 A. CHEN

2 testimony like we are today doing?

3 A. No.

4 Q. Is it fair to say that all of
5 your testimony have been in criminal
6 proceedings?

7 A. Traffic court.

8 Q. Do you know whether or not a
9 judge has ever ruled your testimony or any
10 portion of your testimony to be incredible,
11 meaning not believable?

12 A. No.

13 Q. You don't know or you're not
14 aware?

15 A. I'm not aware.

16 Q. Have you ever been sued as a
17 police officer?

18 A. No.

19 Q. This is the first time that
20 you've been sued as a police officer?

21 A. Yes.

22 Q. Have you ever been sued
23 personally whether it's a car accident,
24 divorce or something like that?

25 A. No.

1 A. CHEN

2 Q. Have you ever sued anyone?

3 A. No.

4 Q. What's your highest level of
5 education?

6 A. Associates.

7 Q. You earned an associates
8 degree?

9 A. Yes.

10 Q. From where?

11 A. BMCC.

12 Q. What does that stand for?

13 A. Borough of Manhattan Community
14 College.

15 Q. What did you earn your degree
16 in?

17 A. Liberal arts.

18 Q. Do you have any other degrees
19 or certificates?

20 A. No.

21 Q. Were you accepted to NYPD the
22 first time that you applied?

23 A. Yes.

24 Q. Did you apply to any other law
25 enforcement units?

1 A. CHEN

2 A. No.

3 Q. Since you joined in 2006, have
4 you applied to any other law enforcement
5 units?

6 A. No.

7 Q. What was your first assignment
8 after graduating from the police academy?

9 A. 115th Precinct.

10 Q. What was your assignment at the
11 115?

12 A. Impact.

13 Q. How long were you at the 115?

14 A. Six to seven months.

15 Q. Where were you assigned after
16 that?

17 A. 110th Precinct.

18 Q. Approximately what year was
19 that?

20 A. 2007.

21 Q. Have you been at the 110
22 without transfer since approximately 2007?

23 A. Yes.

24 Q. What was your first assignment
25 at the 110?

1 A. CHEN

2 A. Kind of like impact too.

3 Q. How long were you an impact
4 officer?

5 A. I don't recall, possibly -- to
6 the best of my recollection, four to five
7 months.

8 Q. What was your next assignment?

9 A. Patrol.

10 Q. Were you assigned another
11 position after patrol at the 110?

12 A. Yes.

13 Q. What was that?

14 A. Business conditions.

15 Q. What is business conditions?

16 A. Enforce peddlers.

17 Q. Enforce what?

18 A. Peddlers.

19 Q. How long were you in that
20 assignment?

21 A. Possibly a year.

22 Q. What was your next assignment?

23 A. Summons.

24 Q. Is that your current
25 assignment?

1 A. CHEN

2 A. Yes.

3 Q. Was that your assignment in
4 August of 2015?

5 A. Yes.

6 Q. I apologize, when were you
7 first assigned into the summons position?

8 A. I don't recall the actual year
9 or date.

10 Q. Have you ever been arrested?

11 A. No.

12 Q. Have you ever been placed on
13 suspension?

14 A. No.

15 Q. Have you ever lost any vacation
16 days or hours?

17 A. No.

18 Q. Have you ever been disciplined
19 for any reason?

20 A. No.

21 Q. Have you ever been GO15?

22 A. No.

23 Q. Aside from this case, have you
24 ever been interviewed by CCRB?

25 A. Yes.

1 A. CHEN

2 Q. On how many occasions?

3 A. Two.

4 Q. Approximately what year was the
5 first time that you were interviewed?

6 A. I don't recall.

7 Q. Was it before 2010?

8 A. I don't recall. I'm sorry.

9 Q. Do you know whether you were
10 being interviewed as a witness or a
11 subject?

12 A. The first time was a subject.

13 Q. What was the civilian alleging
14 had happened?

15 A. Something about the garbage.
16 That's all I remember.

17 Q. When you say something about
18 the garbage, can you clarify that a little
19 bit?

20 A. I believe it was a job that he
21 called 911 and wanted us to take care of
22 the garbage, but when we went to the scene,
23 it wasn't taken care of so he made a CCRB
24 against me.

25 Q. About not taking care of the

1 A. CHEN

2 garbage?

3 A. Yes.

4 Q. Did he make any allegation in
5 connection with a disputed arrest or a
6 disputed ticket or force?

7 A. No.

8 Q. Do you know the outcome of that
9 CCRB investigation?

10 A. Unsubstantiated.

11 Q. How about the second complaint,
12 do you remember approximately what year
13 that was?

14 A. No, I don't.

15 Q. It was after the first one?

16 A. Yes.

17 Q. Was it before 2015?

18 A. Possibly. I don't recall the
19 actual date.

20 Q. Could it have been after the
21 incident that we are talking about today?

22 A. Possibly.

23 Q. Were you called down as a
24 subject or a witness?

25 A. Witness.

1 A. CHEN

2 Q. What was that complaint about,
3 do you know?

4 A. It was a video showing the use
5 of force on a female so I was in the video
6 holding people back.

7 Q. Do you know the outcome of that
8 investigation?

9 A. No, I don't.

10 Q. Have you ever been accused by
11 IUB of making false statements?

12 A. No.

13 Q. Do you know what this lawsuit
14 is about?

15 A. Yes.

16 Q. What do you think it's about?

17 A. Your Plaintiff is pretty much
18 saying that we hit him with the car.

19 Q. Do you remember when you first
20 received, it would be like a complaint or
21 initiating paper, in this lawsuit?

22 A. No, I don't.

23 Q. Do you remember ever receiving
24 it?

25 A. No, I don't.

1 A. CHEN

2 Q. When was the last time that you
3 spoke with Officer Zheng?

4 A. Today.

5 Q. What was the conversation?

6 A. He wanted me to get him tea.

7 Q. He wanted you to get him tea?

8 A. Yes.

9 Q. Did you talk about anything
10 else?

11 A. No.

12 Q. Did he know that you were
13 having your deposition today in this case?

14 A. I believe so.

15 Q. Did you talk about that?

16 A. No.

17 Q. Do you know that Officer Zheng
18 was deposed in this case on Wednesday?

19 A. Yes.

20 Q. How did you know that? I don't
21 want to hear about any conversations with
22 your attorney, but outside of your
23 attorneys, did you learn about his
24 deposition in any other way?

25 A. No.

1 A. CHEN

2 Q. So Officer Zheng didn't tell
3 you about it?

4 A. No.

5 Q. Have you ever spoken with
6 Officer Zheng about what happened on August
7 13, 2015?

8 A. Yes.

9 Q. Aside from the day of the
10 actual incident, tell me about the
11 conversations that you had.

12 A. The first time was the text
13 message where the ADA called me and I
14 wasn't able to hear the phone call because
15 I was in the basement so then I texted
16 Officer Zheng to let him know that the bag
17 was searched by him at the precinct.

18 Q. How did you know that the ADA
19 called you?

20 A. I heard him say that I'm the
21 ADA for the Heins Rodriguez case and it was
22 breaking up. He said you said something at
23 CCRB, did you search the bag and it was
24 breaking up. I said no, I didn't search it
25 at the scene. I guess he didn't hear it so

1 A. CHEN

2 I texted Officer Zheng because I know that
3 he was at criminal court with the ADA.

4 Q. When you say that you were in
5 the basement, where in the basement were
6 you?

7 A. The precinct basement.

8 Q. Between August 13, 2015 and the
9 day that you sent the text message, you had
10 never spoken to Officer Zheng about what
11 happened?

12 A. No.

13 Q. What was your purpose in
14 texting Officer Zheng?

15 A. To clear up for the ADA to let
16 him know that the bag was searched at the
17 precinct.

18 Q. I think you said that the bag
19 was searched at the precinct by Officer
20 Zheng?

21 A. Yes.

22 Q. Why did you think that you had
23 to tell Officer Zheng that he had searched
24 the bag?

25 A. Because at CCRB when they

1 A. CHEN
2 interviewed me, I gave a summarization of
3 what had happened that day and it wasn't in
4 chronological order so I gave a brief
5 summary of what happened so at criminal
6 court, maybe they used that tape and
7 misunderstood what I said so that's why I
8 wanted to clarify to let Officer Zheng tell
9 the ADA to let him know that I didn't
10 search the bag.

11 Q. I want to make sure I'm
12 understanding you. At criminal court, did
13 you say that they used a tape of your
14 interview with CCRB?

15 A. Yes.

16 Q. They misunderstood what you
17 said and thought that you said that the bag
18 was searched at the scene?

19 A. Yes.

20 Q. Who did they think had searched
21 the bag at the scene?

22 A. They thought I did.

23 Q. You were trying to clarify that
24 it was Officer Zheng that searched it at
25 the precinct?

1 A. CHEN

2 A. Yes.

3 Q. Do you know why they -- is this
4 the ADA that's confused?

5 A. Yes.

6 Q. Do you know why he or she was
7 confused?

8 A. Because I'm assuming from the
9 tape that he heard at CCRB when I said the
10 reason why the defendant rode away.

11 Q. Why did you say was the reason
12 the defendant rode away?

13 A. Because he had marijuana.

14 Q. So it was your position that he
15 was fleeing from you and Officer Zheng
16 because he had marijuana in his backpack?

17 MR. KELLY: Objection to form.

18 You can answer.

19 A. Rephrase.

20 Q. Did you think that
21 Mr. Rodriguez was running away from you and
22 your partner because he had weed in his
23 backpack?

24 A. I don't know why he was
25 running. I gave the summarization at CCRB.

1 A. CHEN

2 Q. You gave the summarization as
3 what?

4 A. Possibly the reason why he
5 left.

6 Q. Did you search the backpack at
7 the scene?

8 A. No.

9 Q. Did you search the backpack at
10 the precinct?

11 A. No.

12 Q. So it's your position that the
13 only place the backpack was ever searched
14 was at the precinct by Officer Zheng?

15 MR. KELLY: Objection. You can
16 answer.

17 A. I believe so, but I'm not
18 100 percent sure because I wasn't at the
19 precinct.

20 Q. Did you ever observe Officer
21 Zheng search the backpack at the precinct?

22 A. No, I didn't.

23 Q. When you texted Officer Zheng,
24 you understood that he was appearing in
25 criminal court on Mr. Rodriguez's charges;

1 A. CHEN

2 is that correct?

3 A. Yes.

4 Q. What was your understanding of
5 why Officer Zheng was at the criminal court
6 house that day?

7 A. Honestly I don't know.

8 Q. Did you think that he was
9 testifying as a witness in the case?

10 A. I wouldn't know because we
11 don't talk about the arrests.

12 Q. What do you mean that you don't
13 talk about arrests?

14 A. Meaning if he was going to
15 court that day, I wouldn't know which case
16 he was going to court for.

17 Q. At some point, you found out?

18 A. Yes, because the ADA called me.

19 Q. You knew he was in court?

20 A. Yes.

21 Q. Did you think it was
22 appropriate for you to text Officer Zheng
23 about his testimony?

24 A. I wanted to make it clear for
25 the ADA because like I said, the phone was

1 A. CHEN
2 breaking up and I didn't have the ADA's
3 number and when I tried calling the ADA
4 back, he didn't pick up. That's why I made
5 sure that the ADA understood what I was
6 saying.

7 Q. Did you think that it was
8 appropriate that you were texting Officer
9 Zheng about his testimony when he was in
10 criminal court?

11 A. What do you mean by
12 appropriate?

13 Q. Do you think it's appropriate
14 for you to be texting someone about their
15 testimony when they are under oath in the
16 middle of a criminal proceeding?

17 MR. KELLY: Objection.

18 A. I'm not trying to tell him what
19 to say. I just wanted him to be clear.

20 Q. Do you know what Officer Zheng
21 did with your text?

22 A. No.

23 Q. Do you know that he showed it
24 to the ADA?

25 A. I don't know.

1 A. CHEN

2 Q. Do you know what happened to
3 the criminal prosecution as a result of
4 your text?

5 A. I don't know.

6 Q. Did you ever testify in
7 Mr. Rodriguez's criminal prosecution?

8 A. No, I didn't.

9 Q. Do you know why you didn't?

10 A. No idea.

11 Q. Did you ever ask?

12 A. No.

13 Q. Aside from the texting
14 incident, have you ever spoken with Officer
15 Zheng at any time about what happened on
16 August 13, 2015?

17 A. Yes.

18 Q. What were those conversations?

19 MR. KELLY: Let's go off the
20 record.

21 THE VIDEOGRAPHER: 10:40 a.m.,
22 going off the record.

23 (Whereupon, an off-the-record
24 discussion was held.)

25 THE VIDEOGRAPHER: Back on the

1 A. CHEN

2 record, 10:41 a.m.

3 MS. FETT: Read back my
4 question, please.

5 (Whereupon, the referred-to
6 question was read back by the
7 Reporter.)

8 Q. I'll clarify the question.

9 What I want to know is, any
10 conversations that you might have had with
11 Officer Zheng about what happened on
12 August 13, 2015 or the criminal prosecution
13 of Mr. Rodriguez?

14 A. No.

15 Q. How about this litigation, have
16 you had any conversations with Officer
17 Zheng at any time about this lawsuit?

18 A. Yes.

19 Q. Aside from any conversations
20 that you've talked to with your attorney,
21 what conversations have you had with
22 Officer Zheng?

23 A. I asked him how long was the
24 deposition.

25 Q. What did he say?

1 A. CHEN

2 A. He said very long.

3 Q. Did you ask him anything else
4 about the deposition?

5 A. No.

6 Q. Did you ask him what kinds of
7 questions he was asked?

8 A. No.

9 Q. Did he tell you what it was
10 like?

11 A. He said it was long.

12 Q. That was it?

13 A. Yes.

14 Q. How about Sergeant Starrantino,
15 did you ever talk with Sergeant Starrantino
16 about his deposition?

17 A. No.

18 Q. Or about what happened on
19 August 13, 015?

20 A. No.

21 Q. Have you ever talked to
22 Sergeant Starrantino about this lawsuit?

23 A. No.

24 Q. Going back to Officer Zheng,
25 have you ever communicated with Officer

1 A. CHEN

2 Zheng in any way, e-mail, text, Facebook
3 messaging about this litigation?

4 A. No.

5 Q. Or about what happened on
6 August 13, 2015?

7 A. No.

8 Q. What do you think of Officer
9 Zheng as a police officer?

10 A. He's good.

11 Q. He's a good officer?

12 A. Yes.

13 Q. He was your partner on
14 August 13, 2015?

15 A. Yes.

16 Q. Tell me a little bit about the
17 summons assignment; are you assigned to a
18 regular partner or is it rotated?

19 A. Rotated.

20 Q. Has Officer Zheng been your
21 partner on other occasions aside from
22 August 13, 2015?

23 A. Yes.

24 Q. Describe for me what you do in
25 a summons assignment.

1 A. CHEN

2 A. Usually any type of traffic
3 infraction, we would write summonses for
4 them.

5 Q. What is a bike initiative?

6 A. Pretty much bike enforcement
7 for the day, whether they take the red
8 light going down a one-way-street, going
9 through a stop sign, we stop them and write
10 a summons.

11 Q. Have you ever socialized with
12 Officer Zheng outside of work?

13 A. Yes.

14 Q. Would you consider him a friend
15 outside of work?

16 A. Yes.

17 Q. How about Sergeant Starrantino?

18 A. No.

19 Q. Have you ever been to Officer
20 Zheng's home?

21 A. Yes.

22 Q. Has he been to your home?

23 A. Yes.

24 Q. Are you familiar with the NYPD
25 policy on vehicle pursuits?

1 A. CHEN

2 A. Yes.

3 Q. What is your understanding of
4 it?

5 A. If the sergeant calls off the
6 pursuit, then we have to terminate the
7 pursuit.

8 Q. Have you ever, aside from when
9 you were pursuing Mr. Rodriguez, have you
10 ever been involved in a pursuit?

11 A. Not that I recall.

12 Q. Let me be more specific; have
13 you ever been involved in a vehicle pursuit
14 aside from your pursuit of Mr. Rodriguez?

15 A. Not that I recall.

16 Q. When you are partners with
17 Officer Zheng, is he typically the driver
18 or you're the driver or something else?

19 A. It rotates.

20 Q. Do you think that Officer Zheng
21 is a good driver?

22 A. Yes.

23 Q. You're aware that he struck a
24 pedestrian before aside from our client --
25 strike that.

1 A. CHEN

2 I'm not talking about this
3 incident, but are you aware that he struck
4 a pedestrian before while on duty?

5 A. Yes.

6 Q. Aside from the sergeant or the
7 supervisor calling off a pursuit, is there
8 anything else that you know or understand
9 about a vehicle pursuit?

10 A. No.

11 MS. FETT: Let's mark these,
12 please.

13 (Whereupon, the aforementioned
14 patrol guides were marked as
15 Plaintiff's Exhibit 1 for
16 identification, as of this date, by
17 the Reporter.)

18 MS. FETT: These are section
19 212-39 of the patrol guide and
20 section 221-15 of the patrol guide.
21 They both are related to vehicle
22 pursuits.

23 Q. If you will take a look at both
24 of these patrol guide sections, I will tell
25 you that they are largely the same thing.

1 A. CHEN

2 The patrol guide section that is marked
3 221-15 is currently in effect and the other
4 one that's marked 212-39 was in effect
5 during our incident in August of 2015 so I
6 wanted you to have the benefit of both.
7 Feel free to look at both of them and let
8 me know when you are ready.

9 A. Okay.

10 Q. You're ready?

11 A. Yes.

12 Q. Take a look at the patrol guide
13 that's marked 212-39. I'm going to ask you
14 questions from that one. If you look at
15 number one next to uniform members of
16 service.

17 A. Okay.

18 Q. Can you read what number one
19 says.

20 A. "Initiate vehicle stop."

21 Q. What does that mean to you?

22 A. Stop the car when possible.

23 Q. I'm going to be asking you
24 these questions whether or not it relates
25 to a car, a motor vehicle, a truck, a

1 A. CHEN

2 bicycle. Okay?

3 A. Okay.

4 Q. What's your understanding of
5 that; can you pursue another vehicle or
6 bicycle at all costs, only when it's
7 feasible; what's your understanding of
8 what's that saying?

9 A. Based on my experience, just as
10 long as you don't hurt anybody or property,
11 if you can stop the vehicle, stop them and
12 write them the summons.

13 Q. If you can go on to number two,
14 read what that says, please.

15 A. "Determine the necessity for
16 commencing and continuing a vehicle pursuit
17 by concerning the following; nature of
18 offense --

19 Q. I'm going to stop you there.
20 It's saying the first thing that you want
21 to think about before initiating a pursuit
22 is the nature of the offense; would you
23 agree with that?

24 A. Yes.

25 Q. Let me ask you, what's the most

1 A. CHEN

2 serious type of offense?

3 MR. KELLY: Objection. You can
4 answer.

5 Q. I mean like -- I'm not trying
6 to quiz you, I mean like violation,
7 misdemeanor, felony?

8 A. Based on what I do?

9 Q. No, generally.

10 A. In general, the seven majors
11 which is homicide, rape, burglary, robbery.

12 Q. What would you consider the
13 least serious type of offense?

14 A. A violation.

15 Q. In your opinion, would you
16 pursue a murderer the same way you would
17 pursue a bicyclist who had driven the wrong
18 way down the street?

19 A. No.

20 Q. Why not?

21 A. The nature of the offense.

22 Q. How does the nature of the
23 offense come into play in terms of your
24 consideration of you pursuing them?

25 A. Depending on what the person

1 A. CHEN

2 did, whether it's serious or not.

3 Q. Do you think that a bicyclist
4 that you believe has travelled the wrong
5 way down a street and then you believe is
6 riding away from you, do you believe that's
7 a serious crime?

8 A. No.

9 Q. If you look -- I'm going to
10 skip through B through F on section two
11 unless you want to talk about it because I
12 don't think they are necessarily important
13 for our consideration; is that okay?

14 A. Which one?

15 Q. 2B through F.

16 A. Okay.

17 Q. If you look at the note right
18 under that, can you read the first sentence
19 of that note.

20 A. "Department policy requires
21 that a vehicle pursuit be terminated
22 whenever the risk to uniformed members of
23 the service and the public outweigh the
24 danger to the community if suspect is not
25 immediately apprehended."

1 A. CHEN

2 Q. What's your understanding of
3 that?

4 A. Don't pursue if there's danger
5 involving the cops or the public.

6 Q. Just turn to the second page
7 and go down to number 15. Can you read 15A
8 for me.

9 A. "Allow at least five-car
10 lengths distance from primary pursuit
11 vehicle."

12 Q. Can you read section 15B.

13 A. "Do not pass primary vehicle
14 unless requested by that unit or if other
15 circumstances exist such as a collision,
16 mechanical function -- malfunction,
17 etcetera."

18 Q. Why do you think those
19 provisions are included in number 15?

20 A. I'm not NYPD. I don't make the
21 policy, but from what I read, just to make
22 sure that you don't hurt anybody or damage
23 any property.

24 Q. What was your tour on
25 August 13, 2015?

1 A. CHEN

2 A. I don't recall, but I can look
3 at my memo book, I can tell you.

4 Q. I will definitely show you your
5 memo book shortly. I'm going to ask you
6 questions and if you remember, tell me.
7 What was your assignment that day?

8 A. Summons.

9 Q. Were you assigned a partner?

10 A. Yes.

11 Q. Who was that?

12 A. Officer Zheng.

13 Q. Were you in uniform or
14 plainclothes?

15 A. Uniform.

16 Q. Were you in a marked vehicle or
17 unmarked?

18 A. Unmarked.

19 Q. When you say summons, what
20 specifically were you doing that day; what
21 was your assignment?

22 A. Bicycle summonses.

23 Q. When you are assigned bicycle
24 summonses, describe for me what are you
25 doing.

1 A. CHEN

2 A. Any bicycle infraction, I'll
3 stop the bicyclist and write them a
4 summons.

5 Q. You were at the 110 at this
6 time?

7 A. Yes.

8 Q. Was anyone else in your vehicle
9 that day?

10 A. No.

11 Q. Do you have any recollection of
12 what happened or what occurred involving
13 Mr. Rodriguez that day?

14 A. I saw him coming down the
15 one-way-street. I stepped out of the
16 vehicle to try to stop him and then he
17 turned -- he did a U-turn and when --

18 Q. I'm going to stop you and I
19 apologize. I want to go one step at a time
20 to make it easier. You said that you saw
21 him going down a one-way-street?

22 A. Yes.

23 Q. What street was that?

24 A. 104th Street I believe.

25 Q. He's on a bicycle; is that

1 A. CHEN

2 right?

3 A. Yes.

4 Q. Were you the driver or the
5 recorder that day?

6 A. I was sitting in the passenger
7 seat.

8 Q. Was your vehicle moving or
9 stopped?

10 A. Stopped.

11 Q. Where was Officer Zheng at the
12 time?

13 A. He was writing the summons.

14 Q. Was Officer Zheng inside or
15 outside of the vehicle when you first saw
16 Mr. Rodriguez?

17 A. I don't recall.

18 Q. The person that Officer Zheng
19 was issuing a summons to, where was that
20 person when you first saw Mr. Rodriguez?

21 A. I don't recall.

22 Q. Do you remember whether that
23 person was inside your vehicle, outside
24 your vehicle or something else?

25 A. Outside of the vehicle.

1 A. CHEN

2 Q. What direction was
3 Mr. Rodriguez travelling in on 104th when
4 you first saw him?

5 A. He was heading northbound on
6 104th Street.

7 Q. When you say a one-way-street,
8 do you mean that he's going against
9 traffic?

10 A. Yes.

11 Q. Just describe for me the
12 roadway; it's how many lanes?

13 A. One lane.

14 Q. One lane going in which
15 direction?

16 A. Southbound.

17 Q. One lane going south and I
18 believe you said that Mr. Rodriguez is
19 going north?

20 A. Yes.

21 Q. He's going against traffic?

22 A. Yes.

23 Q. It's one lane of traffic; are
24 there bike lanes on this road?

25 A. No.

1 A. CHEN

2 Q. Are there lanes for vehicles to
3 park?

4 A. Yes.

5 Q. On each side of the street?

6 A. Both sides.

7 Q. Is it one lane of parking on
8 each side?

9 A. Yes.

10 Q. Where -- strike that.
11 What direction was your car
12 facing?

13 A. Southbound.

14 Q. So you're going with traffic?

15 A. Yes.

16 Q. Are you near an intersection?

17 A. Yes.

18 Q. What intersection?

19 A. 43rd Avenue.

20 Q. How far from the intersection
21 of 43rd and 104th would you say that your
22 vehicle was?

23 A. I don't recall, but to the best
24 of my recollection, possibly two-car
25 lengths.

1 A. CHEN

2 Q. Are you on the east side of the
3 road or the west side of 104th?

4 A. I don't recall.

5 Q. Do you recall whether the
6 individual that Officer Zheng was issuing a
7 summons to was standing on the driver's
8 side, the passenger's side or something
9 else?

10 A. I don't recall.

11 Q. When you first saw
12 Mr. Rodriguez, describe for me where he
13 was; was he coming through the
14 intersection, was he already passed the
15 intersection or something else?

16 A. When I first saw him, he was
17 coming through the intersection.

18 Q. So he's headed north?

19 A. Yes.

20 Q. On 104th and he's coming
21 through the intersection of 43rd?

22 A. Yes.

23 Q. Is he coming directly towards
24 your vehicle, is he to the left of your
25 car, to the right of your car or something

1 A. CHEN

2 else?

3 A. He's to the -- to my right.

4 Q. To your right?

5 A. Yes.

6 Q. If you're on the passenger's
7 side, he's to the right of you?

8 A. Yes.

9 Q. Is your vehicle double parked?

10 A. I don't recall.

11 Q. So you don't know if there was
12 another vehicle to the left of your
13 vehicle; is that right?

14 A. Yeah, I don't recall.

15 Q. Was your vehicle obstructing
16 traffic?

17 A. I don't recall.

18 Q. Do you remember whether or not
19 you saw vehicles having to pass your car to
20 continue driving?

21 A. I don't recall.

22 Q. Do you remember the weather
23 conditions that day?

24 A. Sunny.

25 Q. So this was during the day?

1 A. CHEN

2 A. Yes.

3 Q. How about the condition of the
4 roadway, what was that like?

5 A. Clear.

6 MR. KELLY: Objection. You can
7 answer.

8 A. Clear.

9 Q. Was there any construction
10 going on?

11 A. I don't recall.

12 Q. I think you said that your
13 vehicle was about two, two-car lengths from
14 the intersection; is that right?

15 A. Possibly, to the best of my
16 recollection.

17 Q. You first observed
18 Mr. Rodriguez coming through the
19 intersection; is that right?

20 A. Yes.

21 Q. When you saw him, what did you
22 do next?

23 A. I stepped out of my vehicle and
24 tried to stop him with my hand signal.

25 Q. Just describe for me exactly

1 A. CHEN

2 what you did.

3 A. I stepped out of the vehicle
4 and put my right hand you up to stop him.

5 Q. When you stepped out of the
6 vehicle, did you step out and close your
7 door, was your door open or something else?

8 A. I don't recall.

9 Q. When you put your hand up --
10 strike that.

11 Had you walked a few steps in
12 front of the vehicle, were you standing
13 next to your vehicle, where were you when
14 you first put your hand out?

15 A. When I stepped out of the
16 vehicle, I put my hand up.

17 Q. You don't know whether or not
18 you were standing kind of behind your door
19 or in front of your door?

20 A. I don't recall.

21 Q. Describe for me how you put
22 your hand up.

23 A. I raised my right hand to stop
24 him.

25 Q. Is it fair so say that your

1 A. CHEN

2 right hand is kind of directly in front of
3 you?

4 A. Yes (indicating).

5 Q. Was your arm straight or was it
6 bent?

7 A. I don't recall.

8 Q. Did you say anything at the
9 time?

10 A. I don't recall.

11 Q. Did you say anything to Officer
12 Zheng at the time?

13 A. I don't recall.

14 Q. Why did you step out of the
15 vehicle and put your hand out?

16 A. To stop Mr. Rodriguez.

17 Q. Why did you want to stop him?

18 A. To issue him a summons.

19 Q. What did you want to issue him
20 a summons for?

21 A. Going down a one-way-street.

22 Q. At the time you were attempting
23 to stop Mr. Rodriguez, did you see any
24 other bicyclists in the area?

25 A. I don't recall.

1 A. CHEN

2 Q. What happened next after you
3 raised your hand?

4 A. Mr. Rodriguez did a U-turn and
5 went down 43rd Avenue going westbound.

6 Q. How far was Mr. Rodriguez from
7 you when you first put your hand up to stop
8 him?

9 A. To the best of my recollection,
10 possibly one car length.

11 Q. One car length?

12 A. Yes.

13 Q. How far was Mr. Rodriguez from
14 you when you observed him making a U-turn?

15 A. About one car length possibly.

16 Q. Did you make any eye contact
17 with Mr. Rodriguez or did he make eye
18 contact with you when you raised your hand?

19 A. Yes.

20 Q. Were any words spoken between
21 the two of you?

22 A. No.

23 Q. How about when he was making a
24 U-turn, was he looking at you, was he
25 looking away or something else?

1 A. CHEN

2 A. I don't recall.

3 Q. Where was Officer Zheng when
4 you raised your hand?

5 A. I don't recall.

6 Q. I think you already said that
7 you don't know where the individual was
8 that he was giving the summons to; is that
9 correct?

10 A. Yes.

11 Q. Do you recall what
12 Mr. Rodriguez looked like?

13 A. I don't recall.

14 Q. Was he wearing headphones?

15 A. I don't recall.

16 Q. Was he wearing a helmet?

17 A. I don't recall.

18 Q. What color was his bike?

19 A. I don't recall.

20 Q. So when you observed
21 Mr. Rodriguez make a U-turn, what happened
22 next?

23 A. We both got into the car and
24 then we followed him to try to stop him.

25 Q. Let me stop you. When you say

1 A. CHEN

2 that you both got in the car, who got in
3 the car?

4 A. Officer Zheng and I.

5 Q. Describe that for me; you put
6 your hand up and did you say anything to
7 Officer Zheng?

8 A. I didn't say anything.

9 Q. Did he say something to you?

10 A. I don't recall, but we both got
11 into the car. I can't speak for Officer
12 Zheng, but possibly he saw too so that's
13 why he got into the car. I'm not
14 100 percent sure, but we both got into the
15 car and we followed Mr. Rodriguez.

16 Q. I know that you are not inside
17 Officer Zheng's head, but I guess what I
18 want to know is do you know whether one of
19 you said let's get him, he's trying to run;
20 how did you both get in the car and decide
21 to go?

22 A. I don't remember.

23 Q. Do you know whether or not
24 Officer Zheng had finished issuing the
25 summons to the other individual?

1 A. CHEN

2 A. I don't know.

3 Q. When you first got in the car
4 -- strike that.

5 I guess if Officer Zheng also
6 got in the car, it sounds like he was
7 outside the car when he was issuing the
8 summons; does that sound right?

9 A. Yes.

10 Q. When you both get in the car,
11 is Mr. Rodriguez still in your view?

12 A. I don't recall.

13 Q. When he made the U-turn, were
14 there any cars travelling toward him at
15 that time heading south on 104th?

16 A. No.

17 Q. Describe for me how he headed
18 west on 43rd Avenue; did he cut across a
19 whole intersection, was he already on that
20 side of 104th Street, how did he make the
21 U-turn and turn onto 43rd?

22 A. I don't recall.

23 Q. He would have been making a
24 right on 43rd; is that right?

25 A. Yes.

1 A. CHEN

2 Q. When he is coming through the
3 intersection of 104th towards you going
4 northbound, is there a traffic light that
5 he's -- that's directing him?

6 A. No. From his perspective?

7 Q. Exactly.

8 A. I don't think so.

9 Q. There wouldn't be right?

10 A. That wouldn't be because
11 traffic is going southbound.

12 MR. KELLY: Just let her finish
13 the question.

14 Q. When he made the U-turn, there
15 could have been a traffic light at that
16 point, right?

17 A. Yes.

18 Q. Do you remember if you saw --
19 was he stopped at the light, did he go
20 straight through, what happened?

21 A. He just continued going
22 westbound.

23 Q. When your car pursued him, did
24 you -- I think I already asked this, what
25 side of 104th; were you on the east side or

1 A. CHEN

2 the west side?

3 MR. KELLY: Objection. You can
4 answer.

5 A. If I stepped out from the right
6 then I should be on the east side.

7 Q. Are you cutting across a lane
8 of traffic to follow him or something else?

9 A. No, it's one lane traffic.

10 Q. So did you -- did Officer Zheng
11 turn on any lights or sirens?

12 A. I don't recall.

13 Q. Do you recall if you had to
14 stop traffic or in any way impede traffic
15 when you had to make a right on 43rd?

16 A. I don't recall.

17 Q. What happened next?

18 A. We got -- we passed

19 Mr. Rodriguez.

20 Q. Okay.

21 A. And then we stopped the car and
22 when we were about to get out of the car,
23 he hit a parked car.

24 Q. Let me stop you. When you're
25 pursuing Mr. Rodriguez, approximately how

1 A. CHEN

2 fast was Officer Zheng travelling?

3 A. I'm not 100 percent sure.

4 Q. Would you say it was more than
5 ten miles an hour?

6 A. Yes.

7 Q. More than 15?

8 A. Yes.

9 Q. More than 20?

10 A. Yes.

11 Q. More than 25?

12 A. Possibly.

13 Q. More than 30?

14 A. Possibly. I wouldn't know. I
15 wasn't driving.

16 Q. When you first turn onto 43rd,
17 is Mr. Rodriguez in front of you?

18 A. Yes.

19 Q. Could you see him?

20 A. Yes.

21 Q. Did you ever lose sight of
22 Mr. Rodriguez when you were pursuing him on
23 43rd Avenue?

24 A. No.

25 Q. As you're pursuing

1 A. CHEN

2 Mr. Rodriguez, but before you pull up next
3 to him, do you have any conversation with
4 Officer Zheng?

5 A. I don't recall.

6 Q. Do you know whether or not
7 Officer Zheng went over the radio to
8 transmit that he was in pursuit?

9 A. I don't recall.

10 Q. Did you go over the radio to
11 transmit that you were in pursuit?

12 A. I don't recall.

13 Q. When you first turned onto
14 43rd, approximately how far was
15 Mr. Rodriguez from your vehicle?

16 A. I don't recall.

17 Q. Was Mr. Rodriguez travelling on
18 the side of the road, in the middle of the
19 road or something else?

20 A. On my right hand side.

21 Q. So your right hand side would
22 be on the south side of 43rd?

23 A. It would be the north side.

24 Q. I apologize. The north side of
25 43rd?

1 A. CHEN

2 A. Yes.

3 Q. He's on the north side going
4 down 43rd?

5 A. Yes.

6 Q. Is he driving straight ahead,
7 is he weaving or something else?

8 A. I don't recall.

9 Q. Describe for me that roadway.
10 Is it --

11 A. It's a two lane roadway.

12 Q. Two lanes --

13 A. Going east and west.

14 Q. Are there bike lanes on that
15 road?

16 A. No.

17 Q. Are there parking lanes on that
18 road?

19 A. Yes.

20 Q. Does each side have parking
21 lanes?

22 A. Yes.

23 Q. Is it one row of parking lanes
24 or something else?

25 A. Yes, one row.

1 A. CHEN

2 Q. Just describe for me the block;
3 is it a commercial block, are there stores,
4 apartment buildings or something else?

5 A. There are both.

6 Q. Do you recall during the
7 pursuit, were there other cars on the
8 roadway on 43rd?

9 A. I don't recall.

10 Q. It was still light outside?

11 A. Yes.

12 Q. I think I stopped you where you
13 were pursuing him and at what point was it
14 decided that you would pull up alongside
15 Mr. Rodriguez?

16 A. What do you mean pull up
17 alongside him?

18 Q. I apologize. I thought you
19 said that. Did you say that?

20 A. No, I said we passed him.

21 Q. I guess the question is, at
22 what point did you -- at what point was if
23 decided that instead of being behind him,
24 we are now going to pass him?

25 MR. KELLY: Objection. You can

1 A. CHEN

2 answer.

3 A. I wasn't driving so I can't
4 answer for Officer Zheng, but based on my
5 experience, I would want to make sure that
6 we pass him, but I wasn't driving.

7 Q. So any questions that I ask are
8 just going to be about what you know. I
9 don't want you to try to figure out what
10 Officer Zheng was thinking.

11 Was there any conversation
12 between you and Officer Zheng as he begins
13 -- as he drives the vehicle to pass
14 Mr. Rodriguez?

15 A. I don't recall.

16 Q. Do you -- how far down 43rd
17 Avenue had you travelled before you started
18 to pass Mr. Rodriguez's bike? It could be
19 halfway down the block, a quarter of the
20 way or something else?

21 A. To the best of my recollection,
22 halfway.

23 Q. At the time that your vehicle
24 started to pass him, approximately how
25 close were you to Mr. Rodriguez's bicycle

1 A. CHEN

2 when your vehicle began to pass him?

3 A. I don't recall.

4 Q. Did you ever see Mr. Rodriguez
5 turn to look at you as you were pursuing
6 him?

7 A. I don't recall.

8 Q. Do you believe that
9 Mr. Rodriguez knew that you were pursuing
10 him?

11 MR. KELLY: Objection. You can
12 answer.

13 A. I wouldn't know.

14 Q. When your vehicle began to pass
15 Mr. Rodriguez's bicycle, was your vehicle
16 across the middle lane of traffic?

17 A. What do you mean across the
18 middle lane of traffic?

19 Q. Had your vehicle passed the
20 dividing line of the road?

21 A. Possibly, but I really don't
22 recall that either.

23 Q. Do you recall ever seeing
24 oncoming traffic coming towards you as you
25 were passing officer -- I apologize,

1 A. CHEN

2 Mr. Rodriguez's bicycle?

3 A. Traffic going eastbound or
4 traffic going westbound?

5 Q. Either one.

6 A. I don't recall.

7 Q. As your vehicle began to pass
8 Mr. Rodriguez's bicycle, how close was your
9 vehicle to Mr. Rodriguez?

10 A. Possibly three feet.

11 Q. So if you're in the passenger's
12 seat, was Mr. Rodriguez directly next to
13 you at some point?

14 A. Yes.

15 Q. When Mr. Rodriguez was next to
16 you, how far would you say you were from
17 him or your vehicle was from him at that
18 moment?

19 A. To the best of my recollection,
20 possibly three feet as well.

21 Q. What was on the other side of
22 Mr. Rodriguez; was it the curb, was it
23 empty road, other vehicles?

24 A. Other vehicles that were
25 parked.

1 A. CHEN

2 Q. So fair to say that it's your
3 vehicle, Mr. Rodriguez's bicycle and then a
4 parked vehicle?

5 A. Yes.

6 Q. What was your plan at this
7 point?

8 MR. KELLY: Objection. You can
9 answer.

10 A. I didn't have a plan.

11 Q. Why was your vehicle coming up
12 alongside Mr. Rodriguez's bicycle?

13 A. We wanted to follow him and
14 once we stopped, come out of the car and
15 signal him to stop again.

16 Q. Why did you -- why was the
17 vehicle pulled up alongside Mr. Rodriguez's
18 bicycle?

19 MR. KELLY: Objection. You can
20 answer.

21 A. We were trying to pass him.

22 Q. Why did you want to pass him?

23 A. So we could stop the car and
24 come out of the car to signal him to stop.

25 Q. If you were going to pass him,

1 A. CHEN

2 let's say he never fell off his bike, what
3 would you have done with your car after you
4 passed him?

5 A. To stop the car and get out of
6 the car.

7 Q. Was there any conversation
8 between you and Officer Zheng about that?

9 A. I don't recall.

10 Q. Did you ever say to Officer
11 Zheng at any point you're getting too close
12 or anything like this is dangerous,
13 anything like that?

14 A. I don't recall.

15 Q. You said that you were going to
16 pass Mr. Rodriguez, but I guess the
17 question is, if you just passed him and
18 stopped your car, he would keep going so
19 were you planning to turn your wheel so you
20 kind of block him or something else?

21 MR. KELLY: Objection. You can
22 answer.

23 A. I wasn't driving so I wouldn't
24 know.

25 Q. As a police officer who has

1 A. CHEN

2 been doing summonses for a long time, the
3 question is in your experience, if you're
4 pulling up alongside of him and you're
5 attempting to stop him, what do you think
6 was going to be the next course of action
7 if you are attempting to stop and give a
8 summons?

9 A. To pull up in front and then
10 get out of the car and stop him.

11 Q. Pull up in front of him and get
12 out of the car and stop him?

13 A. Yes.

14 Q. How would you do that?

15 A. Once we stop the vehicle, we
16 would get out of the car and stop.

17 Q. Would you position the vehicle
18 in front of him to stop him from going
19 forward?

20 A. Every situation is different.

21 Q. Do you have any idea what the
22 plan was in this situation?

23 A. No.

24 Q. Did it ever cross your mind
25 that the pursuit was getting too dangerous?

1 A. CHEN

2 A. No.

3 Q. Why not?

4 A. Because it was a bicycle
5 infraction so I didn't think it was any
6 danger for that matter.

7 Q. Why not?

8 A. Usually bicyclists, they'll
9 stop if you tell them to stop the bicycle.

10 Q. Did it ever cross your mind
11 that Mr. Rodriguez was not aware that you
12 were pursuing him?

13 A. No.

14 Q. Regardless of what other
15 pedestrians have done in the past, would it
16 ever cross your mind if in this situation
17 this pursuit is getting too dangerous with
18 this bicyclist, would it ever cross your
19 mind to stop the pursuit?

20 A. Yes.

21 Q. Did that ever cross your mind
22 in this situation?

23 A. No, because it happened so
24 fast.

25 Q. From when you turned onto 43rd

1 A. CHEN

2 to the point where Mr. Rodriguez falls off
3 his bike, about how much time passes?

4 A. I wouldn't be able to tell you.

5 Q. Would you say less than two
6 minutes, more than two minutes?

7 A. Possibly less than two minutes.

8 Q. Describe for me what you see
9 when you see Mr. Rodriguez fall off his
10 bike.

11 A. I didn't see how he fell off
12 the bike, but as we stopped the vehicle, he
13 was on the floor.

14 Q. Describe that for me; describe
15 how you stop and what you see, what
16 happens?

17 A. Once we stopped, I heard a thud
18 noise and I'm assuming that he hit the
19 parked car and then once we stopped the
20 car, we got out of the car and he was on
21 the floor.

22 Q. When you hear that noise, do
23 you know -- what did you think the noise
24 was?

25 A. A parked car, that he hit a

1 A. CHEN

2 parked car.

3 Q. Did it ever cross your mind
4 that he could have hit your car?

5 A. If he hit my car, I was on the
6 passenger's side, I would have felt the
7 vibration.

8 Q. And you didn't feel anything?

9 A. No.

10 Q. Was your window up or down?

11 A. I don't recall.

12 Q. When you realized that

13 Mr. Rodriguez has fallen, is your car
14 already stopped or is it still moving?

15 A. I don't recall that.

16 Q. I think you said that you did
17 see Mr. Rodriguez strike the car and fall
18 or you didn't?

19 A. I didn't. I heard the noise.

20 Q. So at some point as you're
21 travelling, you had said that Mr. Rodriguez
22 is next to you, he's on the passenger's
23 side; is that right?

24 A. Yes.

25 Q. Is your head actually turned to

1 A. CHEN

2 the right and you're looking at him?

3 A. Yes.

4 Q. Is he looking straight ahead,
5 is he looking at you or something else?

6 A. I don't recall.

7 Q. At the point when he is next to
8 you, does your vehicle speed up and
9 continue on or do you stay next to him for
10 a period of time?

11 A. We passed him.

12 Q. When you passed him, is that
13 when you had heard -- at some point when
14 you passed him, is that when you heard the
15 noise that let you know that he had fallen?

16 A. Yes.

17 Q. When you stopped the vehicle,
18 was Mr. Rodriguez still somewhere along
19 side of you on the passenger side or was he
20 now behind the vehicle or something else?

21 A. I don't recall.

22 Q. Was there any conversation
23 between you and Officer Zheng when you
24 heard the noise?

25 A. I don't recall.

1 A. CHEN

2 Q. How -- strike that.

3 How about when Officer Zheng
4 stopped the vehicle, was there any
5 conversation?

6 A. I don't recall.

7 Q. Do you know why he stopped the
8 vehicle?

9 A. Why did Officer Zheng?

10 Q. Yes.

11 A. I don't know.

12 Q. Describe for me what happened
13 once your vehicle was stopped.

14 A. We got out of the car and
15 Mr. Rodriguez was in a way resisting and we
16 arrested him.

17 Q. When you first got out of your
18 vehicle, where is your vehicle; are you
19 parked along the parking lane or something
20 else?

21 A. Parked along the parking lane.

22 Q. About how far are you from
23 where Mr. Rodriguez had fallen?

24 A. I don't recall.

25 Q. Was there any conversation

1 A. CHEN
2 between you and Officer Zheng about what
3 you would do next?

4 A. I don't recall that either.

5 Q. When you got out of the
6 vehicle, did you have to walk to
7 Mr. Rodriguez, was he right there at the
8 door or something else?

9 A. Probably walked a few steps.

10 Q. Was Mr. Rodriguez on the road,
11 on the sidewalk or something else?

12 A. I don't recall.

13 Q. Where was his bike?

14 A. I don't recall either.

15 Q. Were you the first to approach
16 Mr. Rodriguez or Officer Zheng?

17 A. I guess we both did.

18 Q. Was there any conversation
19 between any of you when you first
20 approached Mr. Rodriguez?

21 A. I don't recall.

22 Q. What's the next thing that you
23 recall?

24 A. We arrested him.

25 Q. How did you arrest him?

1 A. CHEN

2 A. I don't recall whether I put
3 the handcuffs or Officer Zheng put the
4 handcuffs on him.

5 Q. Was Mr. Rodriguez standing,
6 sitting, laying down; what was his position
7 when you first saw him?

8 A. Once we stopped the car?

9 Q. Once you stopped the car and
10 once you got out of the vehicle, describe
11 Mr. Rodriguez's position.

12 A. On the floor.

13 Q. Laying, sitting, something
14 else?

15 A. He got up.

16 Q. How was he laying on the floor?

17 A. I don't recall.

18 Q. Was he on his back, his side,
19 his stomach?

20 A. I don't recall.

21 Q. Do you remember if he was
22 sitting up?

23 A. I don't recall.

24 Q. Where was his backpack?

25 A. I don't recall.

1 A. CHEN

2 Q. Did you see Mr. Rodriguez
3 bleeding in any way when you first observed
4 him?

5 A. No.

6 Q. Once you walked over to him,
7 did he get up or did you pull him up or
8 something else?

9 A. He was up.

10 Q. He was already standing up?

11 A. Yes.

12 Q. At that time, did you observe
13 any injuries, any marks, anything on him?

14 A. No.

15 Q. What happened next?

16 A. Handcuffs was put on him [sic].

17 Q. I think you said you don't know
18 whether it was you or Officer Zheng?

19 A. Based on my recollection, it
20 would probably be Officer Zheng.

21 Q. Tell me what you remember
22 happening next.

23 A. Then we called the patrol
24 supervisor over and then they took him back
25 to the precinct and then I went back out to

1 A. CHEN
2 do something different which is to continue
3 writing summonses.

4 Q. Once you handcuff
5 Mr. Rodriguez, is he on the sidewalk or on
6 the road or something else?

7 A. On the sidewalk.

8 Q. Is he sitting or standing?

9 A. He was standing and then we sat
10 him down.

11 Q. Why did you sit him down?

12 A. So he doesn't run.

13 Q. So he doesn't?

14 A. Run.

15 Q. Do you know where his bike was
16 at this time?

17 A. No, I don't.

18 Q. How about his backpack?

19 A. I don't recall.

20 Q. Was your car at this point --
21 was it across traffic, was it parked or
22 something else?

23 A. I don't recall.

24 Q. How about civilians, were there
25 civilians in the area watching what was

1 A. CHEN

2 going on?

3 A. Yes.

4 Q. Did you talk to any of them?

5 A. I don't recall.

6 Q. Would you say that there were a
7 lot of civilians, a few or something else?

8 A. I don't recall.

9 Q. How about the vehicle that you
10 -- I think you said that Mr. Rodriguez's
11 bike struck another vehicle; is that right?

12 A. Yes.

13 Q. Did you observe it?

14 A. No.

15 Q. But you heard it?

16 A. Yes.

17 Q. So did you ever look at that
18 vehicle?

19 A. No.

20 Q. Did you ever see if there was
21 any damage to that vehicle?

22 A. I didn't look at it so I
23 wouldn't know.

24 Q. Did you ever talk to the owner
25 of that vehicle?

1 A. CHEN

2 A. No.

3 Q. Who went over the radio to call
4 for a supervisor?

5 A. I don't recall.

6 Q. Do you know what was said?

7 A. No.

8 Q. Was that the first time that
9 either of you had gone over the radio about
10 this incident?

11 A. Possibly, but I don't recall.

12 Q. How soon after one of you went
13 over the radio did a supervisor arrive at
14 the scene?

15 A. I don't recall.

16 Q. Would you say it was more than
17 five minutes?

18 A. Possibly less.

19 Q. While you were waiting for a
20 supervisor to arrive, what were you doing?

21 A. Just standing there waiting.

22 Q. Were you standing with Officer
23 Zheng?

24 A. I mean he was there, but I
25 don't recall whether he was next to me or a

1 A. CHEN

2 few feet away from me.

3 Q. During this time when you are
4 waiting for the supervisor, do you remember
5 any conversation that you had with anyone?

6 A. No.

7 Q. Where was -- in relation to
8 you, where was Mr. Rodriguez? I know that
9 he was sitting, but was he in front of you,
10 behind you; where was he in relation to
11 you?

12 A. Possibly next to me.

13 Q. What was he doing at this time?

14 A. He was cursing.

15 Q. What exactly -- it's okay to
16 curse, what exactly was he saying?

17 A. I mean he just said fuck this,
18 fuck that, but I don't recall exactly what
19 he said because this happened three years
20 ago.

21 Q. Do you know why he was cursing?

22 A. I don't know.

23 Q. Did he appear to be in pain?

24 A. No.

25 Q. Why not?

1 A. CHEN

2 A. More angry I guess.

3 Q. Did you have any idea why he
4 might be angry?

5 A. No.

6 Q. Did you ever ask Mr. Rodriguez
7 if he needed medical treatment?

8 A. I didn't talk to him about
9 that.

10 Q. Why not?

11 A. Because he wasn't hurt.

12 Q. How do you know that?

13 A. He wasn't the bleeding. He
14 didn't have cuts on him. I didn't see any
15 injuries.

16 Q. Are you aware that someone can
17 be injured without bleeding?

18 A. Yes.

19 Q. Did you ever ask Mr. Rodriguez
20 if he was injured or wanted medical
21 treatment?

22 A. No, I didn't.

23 Q. Did he ever ask you for medical
24 treatment?

25 A. I don't recall.

1 A. CHEN

2 Q. Before your supervisor arrived
3 on scene, did any other officers arrive on
4 scene?

5 A. I don't recall.

6 Q. Tell me what happened once your
7 supervisor arrived on scene?

8 A. Once he arrived, I left to go
9 to my other summonses.

10 Q. How was that decided; did he
11 tell you that you could go, did you decide
12 on your own or something else?

13 A. I decided on my own. I'm the
14 summons guy. They don't need to tell me.
15 I can leave and go do my summonses duty.

16 Q. The supervisor is Sergeant
17 Starrantino; is that right?

18 A. Yes.

19 Q. Did you tell Sergeant
20 Starrantino what happened?

21 A. No, I didn't talk to him.

22 Q. He didn't ask you any
23 questions?

24 A. I don't recall.

25 Q. Why didn't you talk to him?

1 A. CHEN

2 A. Because I have other duties
3 that I had to take care of.

4 Q. Do you know whether or not
5 Officer Zheng told Sergeant Starrantino
6 what had happened?

7 A. Possibly, yes.

8 Q. Were you there at any point
9 when Officer Zheng was telling Sergeant
10 Starrantino what had happened?

11 A. I don't recall.

12 Q. When you left the scene, was
13 Mr. Rodriguez still handcuffed on the
14 ground?

15 A. I don't recall.

16 Q. When you left the scene, were
17 the officers still in the area?

18 A. I don't recall.

19 Q. Did you see Mr. Rodriguez taken
20 away and put in a patrol car?

21 A. I didn't see.

22 Q. Did you at any time search the
23 backpack whether it's at the scene or at
24 the precinct or any other time?

25 A. No.

1 A. CHEN

2 Q. Did you observe any officers
3 search the backpack at the scene?

4 A. No.

5 Q. Did you ever see an ambulance
6 arrive to the scene?

7 A. I don't recall.

8 Q. When, if ever, did you see
9 Mr. Rodriguez that day?

10 A. I didn't.

11 Q. At some point, did you return
12 back to the 110?

13 A. Yes.

14 Q. Approximately what time was
15 that?

16 A. I don't recall.

17 Q. Was it nighttime?

18 A. I don't recall.

19 Q. Had you issued summonses
20 between the time that you left
21 Mr. Rodriguez to the time you returned to
22 the 110?

23 A. Yes.

24 Q. Approximately how many?

25 A. I don't recall.

1 A. CHEN

2 Q. Did you see Officer Zheng when
3 you returned to the 110?

4 A. Yes.

5 Q. Did you speak with him?

6 A. Yes.

7 Q. What was your conversation with
8 Officer Zheng?

9 A. I don't recall, but I remember
10 that he was doing the vouchers and then he
11 said, oh this is the reason why he probably
12 ran, because of the marijuana.

13 Q. He said that to you?

14 A. Whether I said it or he said
15 it, I don't recall who said it, but I know
16 that conversation was said.

17 Q. What other conversations did
18 you have with Officer Zheng that night in
19 the precinct?

20 A. That was it.

21 Q. Why was Mr. Rodriguez under
22 arrest once you had stopped him?

23 A. For discon.

24 Q. What's your understanding of
25 what discon is?

1 A. CHEN

2 A. Disorderly conduct when we try
3 to stop you for issuing a summons then
4 leaving the scene.

5 Q. Did you issue Mr. Rodriguez any
6 summonses or was it Officer Zheng?

7 A. I didn't issue any summonses.

8 Q. You did not?

9 A. No.

10 Q. How was it decided that
11 Mr. Rodriguez was going to be charged with
12 disorderly conduct; did you discuss it with
13 Officer Zheng?

14 A. No, I didn't.

15 Q. How did you convey to Officer
16 Zheng that he should be charged with
17 disorderly conduct?

18 MR. KELLY: Objection. You can
19 answer.

20 A. I didn't.

21 Q. Do you know whether or not he
22 was charged with disorderly conduct?

23 A. I don't know.

24 Q. What subsection of the penal
25 code of disorderly conduct should he have

1 A. CHEN

2 been charged with?

3 A. I wouldn't know.

4 Q. You think he should have been
5 charged with that because he was fleeing
6 the scene?

7 A. Based on my experience, yes.

8 Q. Any other charges that you
9 think he should have been charged with?

10 A. Probably the traffic infraction
11 as well.

12 Q. What was that?

13 A. Going down the wrong way of a
14 one-way-street.

15 Q. Anything else?

16 A. I wouldn't know right now.

17 Q. Any other conversations with
18 Officer Zheng back at the precinct aside
19 from something to the effect of oh this is
20 why he fled?

21 A. No.

22 Q. Were you ever interviewed about
23 this incident aside from speaking with your
24 attorneys or speaking with CCRB?

25 A. No.

1 A. CHEN

2 Q. Were you ever interviewed with
3 anyone by IUB?

4 A. No.

5 Q. How about in Queens north, were
6 you interviewed?

7 A. No.

8 Q. Do you know whether or not an
9 investigation was conducted at the 110 on
10 the evening of August 13, 2015?

11 A. I don't know.

12 Q. Did you see officers coming in
13 and interviewing people that night at the
14 precinct?

15 A. I didn't see.

16 Q. Did you ever see Sergeant
17 Starrantino being interviewed?

18 A. No.

19 Q. Do you know now as you sit here
20 today that he was interviewed about the
21 incident?

22 A. I still don't know. I'm
23 assuming he did.

24 Q. If I told you that he was
25 interviewed, but neither you nor

1 A. CHEN

2 Officer Zheng were interviewed aside from
3 CCRB, what do you think about that?

4 A. What do you mean what do I
5 think about it?

6 Q. You're the two officers
7 involved and no one from NYPD ever talked
8 to you about it; do you find that odd?

9 A. No.

10 Q. What ever happened to the
11 individual that Officer Zheng was
12 summonsing when you both got in the car to
13 pursue Mr. Rodriguez?

14 A. I don't know.

15 Q. What ever happened to his
16 summons, do you know?

17 A. I don't know.

18 Q. Did you ever see that
19 individual back at the precinct that night
20 at the 110?

21 A. Which individual?

22 Q. The individual that Officer
23 Zheng had been summonsing when you left to
24 pursue Mr. Rodriguez?

25 A. No.

1 A. CHEN

2 Q. If I told you that he came to
3 the 110 that night and he too was
4 interviewed by IUB, what would you think
5 about that?

6 A. I wouldn't think anything.

7 Q. He's interviewed and Sergeant
8 Starrantino is interviewed, but neither you
9 or Officer Zheng are ever interviewed; do
10 you find that odd?

11 A. I don't know because I'm not
12 IUB so I wouldn't know why they would
13 interview certain people and not others.

14 Q. Did you ever want to tell IUB
15 what you saw and what happened?

16 A. If they asked me, yes, I would
17 tell them.

18 Q. Do you know what happened to
19 the individual -- strike that.

20 I'm going to represent to you
21 that the individual who's getting a summons
22 by Officer Zheng at the time that you left
23 to pursue Mr. Rodriguez, his name was
24 Mr. Flores. Mr. Flores came to the
25 precinct that night and he was interviewed

1 A. CHEN

2 by IUB, do you know what happened to his
3 summons?

4 A. I don't know.

5 Q. It was voided; do you know why
6 his summons was voided?

7 A. Mistakes on his summons.

8 Q. Do you know what he was
9 summoned for?

10 A. I don't recall.

11 Q. Did you observe the alleged
12 infraction that he was being summoned for;
13 was he going the wrong way?

14 A. I don't recall.

15 Q. Had you heard that his summons
16 was voided at any time?

17 A. Just by you telling me right
18 now.

19 Q. I think you said that your
20 vehicle was an unmarked vehicle; is that
21 right?

22 A. Yes.

23 Q. Would you have pursued
24 Mr. Rodriguez any differently if you had
25 been in a marked vehicle?

1 A. CHEN

2 A. I don't know because it wasn't
3 that given situation.

4 Q. How about day or night, does
5 that affect how you would have pursued him,
6 if it was nighttime?

7 A. Possibly, but once again, it
8 wasn't during that situation.

9 Q. Do you think it's possible that
10 your vehicle could have come into contact
11 with Mr. Rodriguez's bike?

12 A. No.

13 Q. Why not?

14 A. Because we were pretty far.

15 Q. When you say pretty far, tell
16 me again how far you think you were.

17 A. About three feet.

18 Q. That's the closest you ever
19 think you got to him?

20 A. Yes.

21 Q. When you were behind
22 Mr. Rodriguez and you were just beginning
23 to pass him, what was the distance that
24 your vehicle was from his bicycle?

25 A. Three feet.

1 A. CHEN

2 Q. As you're pulling up alongside
3 him, what's the distance at that point?

4 A. To the best of my recollection,
5 possibly two-car lengths.

6 Q. Two-car lengths?

7 A. Yes.

8 Q. Do you ever think that your car
9 then turned its wheel towards the curb to
10 cut off Mr. Rodriguez?

11 A. I don't recall.

12 Q. Do you think that that's what
13 Officer Zheng was trying to do, he was
14 trying to cut off Mr. Rodriguez with the
15 car?

16 A. I'm not Officer Zheng. I'm not
17 sure what he was trying to do.

18 Q. But you were in the car?

19 A. Yes.

20 Q. If you look at the physics of
21 the car, does it look like your vehicle is
22 trying to cut off Mr. Rodriguez?

23 A. We passed Mr. Rodriguez, wanted
24 to stop our car so I can get out to signal
25 him to stop.

1 A. CHEN

2 Q. Do you think that at any point
3 your vehicle was cutting off Mr. Rodriguez?

4 A. We passed him. Unless you want
5 to say that's cutting him.

6 Q. Passing would be parallel to
7 him, but what I'm saying is, at some point
8 do you think you turned somewhat in front
9 of his vehicle in a way to cut him off?

10 A. Possibly.

11 Q. Do you think that's an
12 appropriate tactic when you are pursuing
13 someone on a bicycle?

14 A. Based on my experience or are
15 you basing it on NYPD policy?

16 Q. On your general experience as a
17 police officer.

18 A. Yes.

19 Q. Why?

20 A. Because normally if you see a
21 car in front of you, you'll stop.

22 Q. Do you think you ever got too
23 close to Mr. Rodriguez's bicycle?

24 A. No.

25 Q. What's that?

1 A. CHEN

2 A. No.

3 Q. When you got out of your
4 vehicle, did you at any time ever look on
5 the passenger's side of your car to see if
6 there were any marks from his bicycle?

7 A. No.

8 Q. Was the passenger's side of
9 your vehicle or the passenger's side
10 damaged in any way that day?

11 A. It was damaged that day.

12 Q. Where was the damage?

13 A. The passenger's side view
14 mirror.

15 Q. The passenger's side mirror?

16 A. I believe so, yes.

17 Q. Do you know how that damage was
18 -- how the car was damaged on the
19 passenger's side mirror?

20 A. No.

21 Q. Do you know whether or not it
22 was damaged by Mr. Rodriguez's bicycle?

23 A. It was before we got into the
24 car.

25 Q. Before you got into the car

1 A. CHEN

2 when?

3 A. Of the tour, when the tour
4 started.

5 Q. When you first started your
6 tour that day, you already saw the damage
7 on the mirror?

8 A. Yes.

9 Q. How do you know that?

10 A. We did an inspection.

11 Q. When you do an inspection like
12 that, do you note it anywhere?

13 A. In our memo book.

14 Q. Did you do that that day?

15 A. Yes.

16 Q. How long had that mirror been
17 damaged?

18 A. I wouldn't know.

19 Q. When a police car is damaged in
20 some way, how is that first memorialized
21 somewhere?

22 MR. KELLY: Objection. You can
23 answer.

24 A. Can you rephrase the question.

25 Q. Let's say for example your --

1

A. CHEN

2

it was when you were driving the car

3

somehow that mirror was damaged, maybe some

4

kid threw a ball at the mirror and broke

5

it, how would you first note somewhere on

6

paperwork what had happened so that

7

everybody knows this is how it happened,

8

this is when it happened?

9

A. Once you see it when you do the

10

inspection, you put it in your memo book

11

and then sometime at one point at the end

12

of tour, you go back and let the desk

13

officer that the RMP which is the police

14

vehicle was damaged.

15

Q. Let's say someone throws a ball

16

in the mirror, you would write it in your

17

memo book?

18

A. Yes.

19

Q. Then you tell the desk

20

sergeant?

21

A. Yes.

22

Q. What does the desk sergeant do

23

at that point?

24

A. I don't know.

25

Q. Do you know if there's any

1 A. CHEN

2 piece of paper, anything written somewhere
3 so there's a paper trail about what's going
4 on with this damage?

5 A. I don't know.

6 Q. Why was the -- why was
7 Mr. Rodriguez's backpack searched?

8 MR. KELLY: Objection. You can
9 answer.

10 A. Can you rephrase that question.
11 At the precinct?

12 Q. Wherever it was searched. I
13 think you said it was searched at the
14 precinct?

15 A. Yes.

16 Q. Do you know why it was
17 searched?

18 A. To make sure there's no weapons
19 for -- you know.

20 Q. You never searched it?

21 A. No.

22 Q. You don't know whether or not
23 anyone searched it on the scene?

24 A. No.

25 Q. Did you see anyone search it on

1 A. CHEN

2 the scene?

3 MR. KELLY: Objection. You can
4 answer.

5 A. I didn't see anybody.

6 Q. Did you search it on the scene?

7 A. No.

8 Q. Did you ever have to speak with
9 the ADA in connection with this incident
10 with Mr. Rodriguez?

11 A. Yes.

12 Q. Aside from what you told me
13 earlier about the text message, did you
14 speak with the ADA at any other time?

15 A. Yes, I was supposed to testify.

16 Q. So before you were supposed to
17 testify, I assume you were communicating
18 with the ADA about that?

19 A. Yes.

20 Q. On the night of the accident or
21 the next day, were you ever communicating
22 with the ADA about what happened?

23 A. No.

24 Q. Were you ever involved in
25 deciding what to charge Mr. Rodriguez with?

1 A. CHEN

2 A. No.

3 Q. How soon after Mr. Rodriguez's
4 arrest did you first speak with the ADA?

5 A. I don't recall, possibly two,
6 three months later.

7 Q. In that time, had you ever
8 spoken with Officer Zheng about what
9 happened?

10 A. No.

11 Q. So tell me the conversation you
12 had with the ADA?

13 A. Pretty much the same thing,
14 about the text message, to let him
15 understand that I wasn't the one that did
16 the search. What I told CCRB was a
17 summarization of what happened that day and
18 I believe CCRB got confused thinking that I
19 did the search.

20 Q. Aside from talking to the ADA
21 about that, did you talk with the ADA about
22 your appearance, that you were going to
23 testify?

24 A. It never went on.

25 Q. Did you tell the ADA what you

1 A. CHEN

2 saw that day?

3 A. I believe so.

4 Q. What did you tell the ADA?

5 A. The same thing that I'm telling
6 you today, possibly.

7 Q. Anything different?

8 A. Because that happened earlier
9 so my memory was probably clearer, but I
10 don't -- nothing much different.

11 Q. How soon after the incident
12 were you interviewed by CCRB?

13 A. I don't recall, possibly -- I
14 don't want you give you the wrong dates,
15 maybe six months, seven months later,
16 possibly, I don't know.

17 Q. Were you represented by an
18 attorney in that interview?

19 A. Yes.

20 Q. Was that a union attorney or
21 someone else?

22 A. I believe so.

23 Q. How long was that interview?

24 A. Possibly 15, 20 minutes.

25 Q. Was there ever a follow up

1 A. CHEN

2 interview?

3 A. No.

4 Q. Did you speak with CCRB at any
5 other time about the incident aside from
6 the interview?

7 A. No.

8 Q. Were you a subject in the CCRB
9 investigation?

10 A. For that matter?

11 Q. Right.

12 A. I don't recall.

13 MS. FETT: Let's go off the
14 record.

15 THE VIDEOGRAPHER: The time is
16 11:47 a.m., going off the record.

17 (Whereupon, an off-the-record
18 discussion was held.)

19 THE VIDEOGRAPHER: Back on
20 record, 12:03 p.m.

21 MS. FETT: Let's mark this,
22 please.

23 (Whereupon, the aforementioned
24 memo book entry was marked as
25 Plaintiff's Exhibit 2 for

1 A. CHEN

2 identification, as of this date, by
3 the Reporter.)

4 Q. Officer Chen, can you take a
5 look at what's been marked as Plaintiff's
6 Exhibit 2. Look through that and let me
7 know when you are ready.

8 A. Yes.

9 Q. Have you seen this before, this
10 memo book entry?

11 A. Yes.

12 Q. Is this one of the documents
13 that you reviewed when you were meeting
14 with your attorneys?

15 A. Yes.

16 Q. That's your handwriting on the
17 pages?

18 A. Yes.

19 Q. I'm just going to have you turn
20 to the second page. It's marked DEF 77 on
21 the bottom right hand corner. Can you read
22 to me what you wrote on that page.

23 A. "Thursday, 8/13/15 tour is 1100
24 by 0435. 1100 present for duty at the
25 110th Precinct. 1300 RMP number 447,

1 A. CHEN

2 mileage is 3,619, gas is three quarter, no
3 contraband, life hammer, EZ pass,
4 passenger, PO Zheng, side view mirror
5 damaged."

6 Q. If we're looking at this
7 entry -- at what time are you writing this
8 entry?

9 A. 1300 when I got into the car.

10 Q. What did you do between
11 1100 hours and 1300 hours?

12 A. Possibly I was getting changed,
13 possibly doing something on the computer.

14 Q. So you're in the precinct at
15 the 110 for approximately two hours before
16 you go out?

17 A. Yes.

18 Q. The rest of that page is
19 redacted and the following page is redacted
20 and if you'll go to the next page where you
21 see your handwriting, can you read that
22 entry for me.

23 A. "1645 delay entry, bicycle stop
24 at 104th and 43rd. Bicyclist fled scene
25 heading westbound on 43rd Avenue. Caught

1 A. CHEN

2 up to the bicyclist on 102nd and 43rd where
3 bicyclist did strike park car and fell to
4 the ground. Parked the car and went under
5 at 1647."

6 Q. What does delay entry means?

7 A. Delay entry means that I wasn't
8 able to put in chronological order the time
9 because like I said, when we stopped
10 Mr. Rodriguez, afterwards I went back out
11 to write summonses.

12 Q. Does the 1645 represent when
13 you actually wrote this entry or when this
14 incident happened?

15 A. 1645 is the incident.

16 Q. If your memo book were
17 un-redacted and I could see the rest of it,
18 would you have the bicycle summonses that
19 you issued after Mr. Rodriguez fell off the
20 bike in your memo book and at the end you
21 put this entry in afterward?

22 A. Yes.

23 Q. Did you ever discuss with
24 Officer Zheng what you were going to put in
25 your memo book about this?

1 A. CHEN

2 A. No.

3 Q. Did he ever discuss it with
4 you?

5 A. No.

6 Q. Did either of you discuss it
7 with each other how you were going to
8 describe it with this incident?

9 A. I believe it's in our own
10 words.

11 Q. The question is, did you ever
12 discuss it with each other?

13 A. No, because he took the arrest
14 so I don't know what happened afterwards.

15 MS. FETT: Let's mark this,
16 please.

17 (Whereupon, the aforementioned
18 marijuana supporting deposition was
19 marked as Plaintiff's Exhibit 3 for
20 identification, as of this date, by
21 the Reporter.)

22 MS. FETT: This is the
23 marijuana supporting deposition.

24 Q. Take a look at that and let me
25 know when you are ready.

1 A. CHEN

2 A. Yes.

3 Q. Have you seen this report
4 before?

5 A. Have I seen the report itself
6 or this specific one?

7 Q. This specific report for
8 Mr. Rodriguez.

9 A. No.

10 Q. Have you ever completed one of
11 these before?

12 A. Yes.

13 Q. Do you see your handwriting?

14 A. No.

15 Q. This was prepared by Officer
16 Zheng; is that right?

17 MR. KELLY: Objection. You can
18 answer.

19 A. I believe so because it's his
20 name on it.

21 Q. I'm going to ask you to take a
22 look at the first page and on the left side
23 where it is -- I guess it's called the
24 field test report; do you see that?

25 A. On the right side?

1 A. CHEN

2 Q. On the left hand side, it says
3 field test report (indicating).

4 A. Okay, yes.

5 Q. Read down from there it says
6 the date 8/13/15.

7 A. "At 1647."

8 Q. The address, what does that
9 say?

10 A. Is that front of 102-10 43rd
11 Avenue?

12 Q. What is that address?

13 A. What do you mean by that?

14 Q. Is that the address where
15 Mr. Rodriguez was stopped as far as you
16 know?

17 A. Yes.

18 Q. What is this telling us; is
19 this telling us that this is when the field
20 test report was done at 1647?

21 A. I don't know because I didn't
22 prepare this.

23 Q. When you prepared these in the
24 past, when you are filling that portion
25 out, are you describing where you did the

1 A. CHEN

2 field test in that section?

3 A. I don't believe so. It's where
4 we stop the person.

5 Q. But not where you would have
6 done the field test?

7 A. No.

8 Q. Do you know why there would be
9 a line there to put the location, but that
10 wouldn't have to do with the field test?

11 A. I don't know.

12 Q. Turning to the next page, below
13 the caption where it says "I" and it has
14 Officer Zheng's name handwritten there; do
15 you see that?

16 A. Yes.

17 Q. Just read along, it says -- you
18 see where it says "I state that on 8/13/15
19 at 1647"?

20 A. Yes.

21 Q. Read the next line.

22 A. Front of 102-10 43rd Avenue,
23 location County of Queens, State of New
24 York.

25 Q. What does the number one under

1 A. CHEN

2 that say?

3 A. "I recover 12 fill-in quantity
4 of applicable check one only --

5 Q. You don't have to read all of
6 that. Is it fair to say basically what he
7 recovered, that he recovered 12 zips of
8 marijuana?

9 A. He recovered 12 zips.

10 Q. Would you agree with that?

11 A. Yes.

12 Q. Isn't this document -- isn't
13 Officer Zheng saying that he recovered it
14 at the scene?

15 A. Well I'm not Officer Zheng so I
16 can't tell you why he put that. Usually
17 the location is where we stop the
18 individual, but then we searched the
19 backpack at the precinct.

20 Q. Why would you search the
21 backpack at the precinct?

22 A. To make sure there's no
23 weapons.

24 Q. Why wouldn't you search it at
25 the scene?

1 A. CHEN

2 A. Why? Unless -- depending on
3 the situation of whatever crime it is.
4 Like I said, it was a traffic infraction so
5 there was no need to search the backpack at
6 the scene.

7 Q. Would you have been allowed to
8 search the backpack at the scene?

9 A. I wouldn't know because I'm not
10 -- I don't make the policies for NYPD.

11 Q. But you are a police officer?

12 A. Yes.

13 Q. You're supposed to follow NYPD
14 policy?

15 A. Yes.

16 Q. As a police officer, would you
17 have been allowed to search Mr. Rodriguez's
18 bag at the scene?

19 A. No.

20 Q. Why not?

21 A. Because you're not allowed to
22 unless -- depending on the crime itself.

23 Q. What about for what
24 Mr. Rodriguez was under arrest for, would
25 you have been allowed to search his bag?

1 A. CHEN

2 A. No.

3 Q. Why not?

4 A. Because it's not a serious
5 matter.

6 Q. Wouldn't you agree that when
7 you are looking at this supporting
8 deposition, it looks as if Officer Zheng
9 searched the bag or at least that's what
10 he's writing, that he searched the bag at
11 the scene; would you agree are that?

12 A. No, the ADA -- they figured
13 that out. The location, we always put the
14 location where the arrest was made.

15 Q. How do the ADA's figure that
16 out; what does that mean?

17 A. We put down the location of
18 where the person was stopped.

19 Q. How does it not get complicated
20 if you always put down in a marijuana
21 supporting deposition that you recovered it
22 at the scene because that's what you always
23 put, you always put the address; how does
24 the issue of where the search took place
25 not get complicated by doing that?

1 A. CHEN

2 A. What do you mean?

3 Q. Exactly why you were texting
4 Officer Zheng, it looks as if he's done the
5 search at the scene; isn't that right if
6 you look at this paper?

7 MR. KELLY: Objection. You can
8 answer.

9 A. Like I said, the location, we
10 have to put down where the person was
11 stopped and the search was done back at the
12 precinct.

13 Q. But if I read from this
14 document, it says "I state that on 8/13/15
15 at 1647 in front of 102 -- 10 43rd Avenue,
16 in Queens, I recovered 12 zips."

17 A. Like I said, I'm not Officer
18 Zheng, so I can't speak for him.

19 Q. I understand that, but do you
20 think he filled this out correctly if he
21 searched the bag at the precinct?

22 A. Yes, we always put down the
23 location where the person is stopped.

24 Q. Do you think it's possible that
25 he searched the bag at the scene?

1 A. CHEN

2 A. That I?

3 Q. That he.

4 A. I wouldn't know.

5 Q. Is it possible?

6 A. I wouldn't know.

7 Q. Is it possible that you

8 searched the bag at the scene?

9 A. No.

10 Q. Why not?

11 A. I did not look at the bag at

12 all.

13 MS. FETT: Let's mark this,

14 please.

15 (Whereupon, the aforementioned

16 text messages were marked as

17 Plaintiff's Exhibit 4 for

18 identification, as of this date, by

19 the Reporter.)

20 Q. Take a look at that exhibit and

21 let me know when you are ready.

22 A. Yes.

23 Q. I'm going to skip to the second

24 page that's marked DEF 489. Is this

25 exhibit, is this a copy of your text

1 A. CHEN

2 messages?

3 A. Yes.

4 Q. Are these text messages to

5 Officer Zheng?

6 A. Yes.

7 Q. Are these the messages that you

8 were referring to earlier in the

9 deposition?

10 A. Yes.

11 Q. I'm sorry I told you to go to

12 the second page, but go back to the first

13 page, they are dated March 22nd, does that

14 in any way -- does that sound like when you

15 would have sent these text messages?

16 A. I wouldn't recall.

17 Q. Going back to the second page,

18 can you read for me the first text on that

19 page.

20 A. "Run this GXU 1697 New York

21 plate, the year and registration."

22 Q. Is that you texting to Officer

23 Zheng?

24 A. Yes.

25 Q. Can you read what he writes

1 A. CHEN

2 back to you?

3 A. "I'm at criminal court about to
4 go on the stand."

5 Q. What do you write?

6 A. "Nice, when you are coming
7 back?"

8 Q. What did he write?

9 A. "Still waiting, coming back
10 now, chang to my own clothes then come back
11 later. They are about to go on lunch
12 break. I'm not going to make bait to
13 testify before that for sure."

14 Q. What do you write?

15 A. "Okay."

16 Q. I think it's repeating, but can
17 you go to the top of 490; what does your
18 text say?

19 A. "You said that the bag was
20 searched at the precinct."

21 Q. So what do you mean by that?

22 A. That was more like a statement
23 instead of a question because I said you
24 said that the bag was searched at the
25 precinct. When the ADA called me, he

1 A. CHEN

2 thought that I did the search at the scene
3 because of the CCRB tape. I said you said
4 the bag was searched at the precinct.

5 Q. It looks like you knew that
6 Officer Zheng was in criminal court
7 testifying about this case that day; is
8 that fair to say?

9 A. Yes.

10 Q. So you're texting him about his
11 testimony?

12 A. No, I was texting him about the
13 misunderstanding that the ADA had with me
14 because I wanted to clear -- I wanted to
15 make clear what the ADA said to me so
16 that's why I said did you say that the bag
17 was searched at the precinct.

18 Q. You've testified in court a
19 lot, right?

20 A. Just traffic court.

21 Q. You never testified in criminal
22 court?

23 A. No.

24 Q. No?

25 A. No.

1 A. CHEN

2 Q. Do you understand that when you
3 are testifying or you're on the stand, you
4 are not supposed to be communicating with
5 anybody while you are testifying?

6 A. He wasn't testifying because he
7 was waiting.

8 Q. I can represent to you that he
9 was in the middle of testifying and had
10 gotten a specific direction from the judge
11 not to communicate with anyone about the
12 incident.

13 A. Okay.

14 Q. And the reason why a judge
15 would have done that, and this is my
16 opinion is because of the obvious, it looks
17 like you are trying to coordinate the
18 testimony with the texts?

19 MR. KELLY: Note my objection.

20 Q. Is that what you were doing?

21 A. I was trying to clear up what
22 the ADA was trying to say to me and I was
23 trying to tell him that the bag was not
24 searched at the scene by me.

25 Q. Before he texted you anything

1 A. CHEN

2 about the bag or the search or why he's
3 there, the first thing you say is out of
4 nowhere, you said that the bag was searched
5 at the precinct; why did you say that all
6 of a sudden?

7 MR. KELLY: Objection. You can
8 answer.

9 A. It could have been you or I.

10 Q. Why did you even bring that up
11 at that point?

12 A. To make it clear for the ADA to
13 understand that I didn't do any of the
14 search at the precinct because the ADA
15 said, did I do the search at the scene and
16 I guess the phone -- he couldn't hear me.

17 Q. Were you worried about it?

18 A. Was I worried about it?

19 Q. Yes.

20 A. What do you mean?

21 Q. Were you worried about the
22 testimony?

23 A. To make sure the ADA did not
24 get confused.

25 Q. Was that worrying you?

1 A. CHEN

2 A. Yes.

3 Q. Why?

4 A. Because I don't want the ADA to
5 get confused by what really happened and
6 what didn't happen or did happen.

7 Q. If the ADA or CCRB, if
8 everybody was confused about what you had
9 said and it was believed that you had
10 searched the bag at the scene, why would
11 that concern you?

12 A. Because I wanted to make it
13 clear that I didn't do the search at the
14 scene.

15 Q. What does he respond; what does
16 Officer Zheng respond when you say that?

17 A. He said yes. I said "you're
18 with the ADA?" He said "I was."

19 Q. And what did you write after
20 that?

21 A. He picking up.

22 Q. What does that mean?

23 A. I tried to call him back. I
24 stepped out of the basement to call the ADA
25 and she didn't pick up so I texted tell the

1 A. CHEN

2 ADA --

3 Q. I'm sorry, I don't want to miss
4 what he wrote in response; Officer Zheng
5 wrote?

6 A. "He just went in."

7 Q. And you wrote?

8 A. I said "tell the ADA that I
9 said you looked at the bag, not me at the
10 precinct. He's saying that I said at CCRB
11 that I searched the bag. I didn't and I
12 don't recall I said anything like that at
13 CCRB. You took him in with the bag. I
14 didn't get to search anything."

15 Q. Describe what you are doing
16 right there; you are telling or asking
17 Officer Zheng to do what?

18 A. To make it clear that I didn't
19 look or search the bag at the scene because
20 the ADA was confused. He thought I
21 searched because I gave a summarization at
22 CCRB of what happened.

23 Q. There are a lot of details
24 about the pursuit and the stop that you
25 don't remember; is it possible that you did

1 A. CHEN

2 search the bag at the scene and you don't
3 remember?

4 A. No, I didn't touch the bag.

5 Q. How do you know that for sure?

6 A. I might have touched the bag,
7 but I didn't look inside of the bag.

8 Q. How do you know that for sure?

9 A. How do I know that for sure?

10 Q. Yes.

11 A. Because he took the arrest.

12 Q. What does that mean?

13 A. Meaning that it's not my
14 business anymore.

15 Q. So you would have never done
16 that under those circumstances?

17 A. No.

18 Q. Have you ever been involved in
19 an arrest where your partner or another
20 officer takes the collar and you do a
21 search?

22 A. Yes.

23 Q. Why would it be so unheard of
24 if you had possibly searched the backpack
25 at the scene?

1 A. CHEN

2 A. Because -- usually when we do
3 the search, it would be back at the
4 precinct, but we wouldn't do the search at
5 the scene.

6 Q. It's just not possible to have
7 done it at the scene?

8 A. No.

9 Q. Going back -- what page are you
10 on right now Officer Chen?

11 A. 490.

12 Q. Let's skip -- can you turn to
13 page 491 and this is repeating. You see in
14 the middle of 491 "tell the ADA"?

15 A. Yes.

16 Q. That's what you already read?

17 A. Yes.

18 Q. Read where it says, "sorry, I
19 was in the bathroom."

20 A. "Sorry I was in the bathroom
21 before, the reception was bad."

22 Q. What are you saying there?

23 A. When I was -- when the ADA
24 called me, he couldn't hear. So I said
25 "sorry I was in the bathroom before, the

1 A. CHEN

2 reception is bad."

3 Q. I'm confused because it looks
4 like you were just speaking to Officer
5 Zheng, but you were in the bathroom and you
6 couldn't hear him; is that what you are
7 saying?

8 A. Repeat that question.

9 Q. When you say "sorry, I was in
10 the bathroom, the reception is bad", what
11 are you referring to there?

12 A. I was in the bathroom when the
13 ADA called me.

14 Q. So you're saying sorry to the
15 ADA in that text?

16 A. Yes.

17 Q. Why are you saying sorry to the
18 ADA in a text to Officer Zheng?

19 A. Because I don't know whether he
20 was with the ADA at the time so that's why
21 I said sorry, I was in the bathroom.

22 Q. Earlier you had said that you
23 were in the basement when the ADA called
24 you?

25 A. The basement bathroom. The

1 A. CHEN

2 basement is in the bathroom.

3 Q. The bathroom is in the
4 basement?

5 A. Yes.

6 Q. Did you at any time after you
7 -- after or during this texting
8 conversation with Officer Zheng, did you or
9 Officer Zheng ever call each other on your
10 phones?

11 A. No.

12 Q. If I was to get your phone
13 records, I wouldn't see a phone call
14 between you and Officer Zheng?

15 A. Yes.

16 Q. I would not or I would?

17 A. I don't recall, but I doubt it.

18 Q. When you're saying sorry I was
19 in the bathroom, you're not saying that to
20 Officer Zheng?

21 A. I said it as in sorry to both
22 of them. They were trying to get my
23 information about what happened so I wanted
24 to make it clear to the ADA so I wasn't
25 sure if he was with the ADA or not at the

1 A. CHEN

2 time.

3 Q. If you look at the next thing
4 you text, what are you saying there?

5 A. "You have the stop sign
6 testimony for stop sign for 104th and
7 42nd."

8 Q. What are you saying there;
9 what's that about?

10 A. That's traffic court testimony
11 that usually we write a certain location, I
12 asked if he has that testimony.

13 Q. Is this for the Rodriguez --

14 A. No, this is for -- this is just
15 for 104th Street and 42nd Avenue testimony
16 in general.

17 Q. So you're saying this doesn't
18 have anything to do with the criminal court
19 proceeding that was going on in connection
20 with Mr. Rodriguez that day?

21 A. No.

22 Q. But you were texting it to
23 Officer Zheng?

24 A. Yes.

25 Q. It looks like -- what are you

1 A. CHEN

2 saying next after that?

3 A. "Hello, are you there."

4 Q. It looks like you initially
5 sent the text about the ADA and the bag
6 search around 2:37 or sometime after that;
7 do you see that?

8 A. Yes.

9 Q. At 4:16, you're talking about
10 the traffic court testimony, I guess?

11 A. Yes.

12 Q. At 5:23, you're -- what are you
13 saying?

14 A. "Hello, are you there."

15 Q. Did you ever speak to Officer
16 Zheng that day about what you had texted?

17 A. I don't recall. You mean about
18 the testimony or about the text message?

19 Q. About either one.

20 A. Possibly.

21 Q. Did you find out why Officer
22 Zheng wasn't responding to your texts?

23 A. I would assume that he was in
24 court.

25 Q. Once you saw Officer Zheng

1 A. CHEN

2 again, did you ever talk about why he
3 didn't respond to your text?

4 A. I don't recall.

5 Q. Did you ever talk with each
6 other about what you had texted that day?

7 A. I don't recall.

8 Q. Did you ever figure out with
9 Officer Zheng how or where the bag was
10 searched?

11 A. What do you mean?

12 Q. There's confusion. It seems
13 like there's confusion, I know you think
14 it's the CCRB --

15 A. After I spoke to the ADA, the
16 ADA spoke to Officer Zheng.

17 Q. When did you finally speak to
18 the ADA that day; was it that day?

19 A. Maybe a week later, possibly.
20 I don't recall the actual date itself.

21 Q. Did you ever speak with the ADA
22 that day after they tried to get a hold of
23 you and it was breaking up?

24 A. I don't recall.

25 Q. You didn't speak with the ADA

1 A. CHEN

2 again until about a week later?

3 A. Possibly. I don't recall.

4 Q. What was the conversation?

5 A. The same thing, about the bag
6 being searched, whether it was on the scene
7 or back at the precinct. Did I do any of
8 it and I said no, I didn't.

9 Q. Did the ADA say anything to you
10 about the text you had sent to Officer
11 Zheng on March 22nd?

12 A. Yes, I recall that he did show
13 me this text.

14 Q. What did he say when he showed
15 it to you?

16 A. He asked me to explain to him
17 the same reason why I sent this.

18 Q. What were the exact words that
19 the ADA said to you?

20 A. I don't recall.

21 Q. But something like why did you
22 send this?

23 A. Yes.

24 Q. Was anyone else in the room
25 with you?

1 A. CHEN

2 A. No.

3 Q. What was your response?

4 A. I explained to him that I
5 wanted to make it clear that I didn't do
6 the search.

7 Q. What did he say in response?

8 A. I don't recall.

9 Q. What was the sum and substance
10 of the conversation?

11 A. Pretty much to clarify the
12 reason why at CCRB what I said. I said at
13 CCRB, it was an entire summarization of
14 what happened that day.

15 Q. What was the sum and substance
16 of the ADA's response?

17 A. He said okay.

18 Q. Did he in any way say hey, you
19 shouldn't have sent this text or anything
20 like that?

21 A. I don't recall, but when I
22 explained to him, he understood what I
23 meant.

24 Q. Did you find it odd that he had
25 a copy of your text messages with Officer

1 A. CHEN

2 Zheng?

3 A. No.

4 Q. It didn't seem strange to you?

5 A. Odd as in? What do you mean by
6 odd.

7 Q. If someone all of a sudden had
8 a xerox copy of the text messages that I
9 sent, I would find it to be odd so I just
10 want to know if you think that that's
11 strange?

12 A. I mean it is.

13 Q. Did you ask Officer Zheng how
14 the ADA got the texts?

15 A. I asked the ADA.

16 Q. What did the ADA say?

17 A. He said the judge wanted copies
18 of it.

19 Q. Did he tell you why?

20 A. I don't recall.

21 Q. Did you ever meet with the
22 judge about the text?

23 A. No.

24 Q. So the ADA never told you why
25 the judge wanted copies of the texts?

1 A. CHEN

2 MR. KELLY: Objection. You can
3 answer.

4 A. I don't recall exactly what he
5 said to me, but from based on my
6 recollection, he was trying to tell me that
7 because of whatever I said at CCRB was
8 misunderstood so therefore, they wanted to
9 see the text messages between me and
10 Officer Zheng so that's why they have a
11 copy of it. When I explained to him what
12 happened, he said okay, he understood.

13 Q. Did you ever speak with the ADA
14 again about this prosecution after that
15 day?

16 A. No.

17 Q. Were you ever involved in any
18 way with the prosecution after speaking
19 with the ADA that day?

20 A. No.

21 Q. Turn to DEF 495; is that your
22 handwriting?

23 A. No.

24 Q. Do you know whose handwriting
25 that is?

1 A. CHEN

2 A. No.

3 Q. Do you know if it's Officer
4 Zheng's handwriting?

5 A. I don't know.

6 Q. You see at the top, I think it
7 says blacked out and then I can't read the
8 next line and I think it says "got
9 handcuffed on the floor" and then "struck
10 his bike on the floor." Do you know
11 whether or not this note is about what
12 happened to Mr. Rodriguez?

13 A. I don't know.

14 Q. Did you ever see Mr. Rodriguez
15 lose consciousness at the scene?

16 A. No.

17 Q. Did he ever appear dizzy?

18 A. Did he appear dizzy or did I
19 ask him if he was dizzy?

20 Q. Either one. Did he appear
21 dizzy?

22 A. Not that I recall.

23 Q. Did you ask him if he was
24 dizzy?

25 A. I don't recall about asking

1 A. CHEN

2 him.

3 Q. Did he seem completely lucid,
4 coherent?

5 A. Yes.

6 Q. Was he mumbling at all in his
7 speech?

8 A. No.

9 MS. FETT: I'm going to have
10 this marked as Plaintiff's Exhibit 5.
11 This is the resisting arrest and
12 disorderly conduct deposition.

13 (Whereupon, the aforementioned
14 resisting arrest and disorderly
15 conduct deposition was marked as
16 Plaintiff's Exhibit 5 for
17 identification, as of this date, by
18 the Reporter.)

19 Q. Officer, take a look at
20 Plaintiff's Exhibit 5 and let me know when
21 you are ready.

22 A. Yes.

23 Q. When you were preparing for
24 this deposition, did you look at these two
25 pages?

1 A. CHEN

2 A. No.

3 Q. Have you ever seen these two
4 specific pages before in connection with
5 Heins Rodriguez?

6 A. No.

7 Q. Does your handwriting appear
8 anywhere on those pages?

9 A. No.

10 Q. Have you ever filled out a
11 resisting arrest deposition before?

12 A. Yes.

13 Q. Looking at DEF 66, from your
14 experience, does it say that Officer Zheng
15 is the officer that completed this
16 paperwork?

17 A. Yes.

18 Q. Can you read for me, similar to
19 the marijuana deposition, just that middle
20 paragraph where it says "I, Officer Zheng,
21 shield number" such and such and read the
22 rest?

23 A. "New York City Police Officer
24 Detective and I state that on 8/13/15 at
25 1645 at front of 102-10 43rd Avenue,

1 A. CHEN

2 location County of Queens, State of New
3 York."

4 Q. Read the next line.

5 A. "Resisting arrest, defendant
6 intentionally prevented or attempted to
7 prevent me from affecting an authorized
8 arrest of the defendant."

9 Q. What was checked off?

10 A. "Flailing defendants's arms,
11 holding defendants's arms against
12 defendant's body, struggling with me and
13 refusing to be handcuffed."

14 Q. When you are looking at this
15 document, where is Officer Zheng saying
16 that this resisting arrest took place?

17 A. At 102-10 43rd Avenue.

18 Q. Why in this document is it
19 saying that that happened at 102-10 43rd
20 Avenue, but in the marijuana supporting
21 deposition which is written the same way,
22 it doesn't mean that, it means that it took
23 place back at the precinct?

24 MR. KELLY: Objection. You can
25 answer.

1 A. CHEN

2 A. Like I said, we always put the
3 location where the defendant was arrested
4 so on the marijuana paperwork is the same
5 thing of the location where the person was
6 arrested.

7 Q. We're not saying here in the
8 resisting arrest deposition that this is
9 where the actual flailing of the arms and
10 holding the body, this is where it occurred
11 102-10 43rd Avenue?

12 A. Yes.

13 Q. That's where it occurred?

14 A. This is the location where the
15 defendant was arrested.

16 Q. Would this be the location
17 where the defendant allegedly resisted
18 arrest?

19 A. Yes.

20 Q. Did you ever see Mr. Rodriguez
21 flail his arms?

22 A. Yes.

23 Q. Did you ever see him holding
24 his arms against his body?

25 A. I don't recall.

1 A. CHEN

2 Q. Did you see him struggling with
3 Officer Zheng?

4 A. Yes.

5 Q. Did he refuse to be handcuffed?

6 A. Yes.

7 Q. How did he refuse?

8 A. He said why am I getting
9 handcuffed I believe, based on my
10 recollection. Why am I getting arrested.

11 Q. When someone asks why they are
12 being arrested, does that constitute
13 resisting arrest?

14 A. No.

15 Q. Did you or Officer Zheng answer
16 him when he asked why am I being arrested?

17 A. I don't recall, but I believe
18 Officer Zheng did say something. I don't
19 recall exactly what he said.

20 Q. If you turn to the next page,
21 it's marked DEF 67. This is for disorderly
22 conduct. Can you again -- it's the same
23 paragraph that has been on these
24 depositions, "I Officer Zheng", his shield
25 number, his precinct and can you read where

1 A. CHEN

2 it says "I state that on."

3 A. "8/13/15 at 1645 at corner of
4 104th or 114th Street and 43rd Avenue,
5 location County of Queens, State of New
6 York."

7 Q. Under it, what does it say?

8 A. "Disorderly conduct."

9 Q. Can you read just the parts
10 where Officer Zheng checked off the box.

11 A. "Obstruct vehicle or pedestrian
12 traffic, going wrong way in one-way-street
13 in middle lane and passed steady red light
14 and fleeing from officer on bike in a
15 reckless manner."

16 Q. And the next line?

17 A. "How did the defendant cause
18 public inconvenience? A crowd gathered in
19 response to the defendant's actions and
20 blocked traffic, caused traffic jam."

21 Q. When Mr. Rodriguez was going in
22 the wrong direction down 104th Street, was
23 he obstructing traffic?

24 A. This is based on my experience.

25 Q. Okay.

1 A. CHEN

2 A. If traffic is going one-way and
3 if a bicyclist comes down the opposite
4 direction, to me you're causing like a
5 disturbance because what if he would have
6 somehow moved to the side and it would have
7 hit the car or the car would have hit the
8 bicyclist so to me that is obstructing
9 traffic.

10 Q. So what if a bicyclist is
11 travelling the wrong way down the street,
12 but there's no cars around, could he be
13 arrested for disorderly conduct?

14 A. You mean based on me or based
15 on?

16 Q. Based on what you just said.

17 A. Yes.

18 Q. The next thing that's marked
19 off, it says "fleeing from officer on a
20 bike in a reckless manner"; what is your
21 opinion on what Officer Zheng is referring
22 to there?

23 A. He was pretty much leaving the
24 scene from when we tried to stop him.

25 Q. That's when he made the U-turn

1 A. CHEN

2 and gone up 43rd Avenue; is that right?

3 A. Yes.

4 Q. When it says a crowd gathered
5 in response to his actions, did you ever
6 see a crowd gathering?

7 A. There were people at the scene.

8 Q. Which scene?

9 A. By where the arrest took place.

10 Q. Was there a crowd gathering
11 when Mr. Rodriguez made the U-turn?

12 A. I don't recall.

13 Q. Was there a crowd gathering
14 when you were pursuing Mr. Rodriguez on
15 43rd Avenue?

16 A. I don't recall.

17 Q. Was the first time that you saw
18 people standing around looking, was that
19 after Mr. Rodriguez had fallen off his
20 bike?

21 A. Yes.

22 Q. Did Mr. Rodriguez, at any
23 point, ever block traffic?

24 A. I don't recall whether he
25 blocked traffic.

1 A. CHEN

2 Q. Did you ever see him cause a
3 traffic jam?

4 A. I don't recall.

5 Q. Did your vehicle ever block
6 traffic during this incident?

7 A. I don't recall.

8 Q. Did you ever see Mr. Rodriguez
9 ride his bicycle on a sidewalk that day?

10 A. No.

11 MS. FETT: Can I have these
12 marked as Plaintiff's Exhibit 6 and
13 this is DEF 988 through DEF 991.
14 These are photographs of a blue
15 vehicle.

16 (Whereupon, the aforementioned
17 photographs was marked as Plaintiff's
18 Exhibit 6 for identification, as of
19 this date, by the Reporter.)

20 Q. Officer, just take a look at
21 that and let me know when you are ready.

22 A. I'm ready.

23 Q. Have you seen these pictures
24 before?

25 A. No.

1 A. CHEN

2 Q. I'm going to represent to you
3 that these are pictures of the vehicle that
4 Mr. Rodriguez struck with his bicycle on
5 August 13, 2015.

6 A. Okay.

7 Q. Knowing that, does the car look
8 familiar?

9 A. I don't recall, but this is
10 possibly the car that he struck.

11 Q. I just looked at page 991. Can
12 you tell me -- that's a mistake, that's not
13 a photograph. I'm going to ask you about
14 the first two pages.

15 A. Okay.

16 Q. When you got out of the vehicle
17 that day after Mr. Rodriguez had fallen,
18 did you ever take a look at the car that he
19 had struck?

20 A. No.

21 Q. So you didn't take a look at it
22 to see if there was any damage?

23 A. No.

24 Q. Do you know whether it was
25 damaged?

1 A. CHEN

2 A. I don't know.

3 Q. If this is where
4 Mr. Rodriguez's bicycle struck the other
5 vehicle at DEF 988 that we are looking at
6 -- strike that.

7 MS. FETT: Can I have this
8 marked as Plaintiff's Exhibit 7.
9 This is photographs marked DEF 1167
10 through 1173.

11 (Whereupon, the aforementioned
12 photographs was marked as Plaintiff's
13 Exhibit 7 for identification, as of
14 this date, by the Reporter.)

15 Q. Just let me know when you are
16 ready.

17 A. Yes.

18 Q. If you can just turn to the
19 page marked DEF 1170, is that
20 Mr. Rodriguez?

21 A. Honestly I wouldn't know.

22 Q. So you don't remember what he
23 looked like?

24 A. No.

25 Q. I can represent to you that

1 A. CHEN

2 these are photographs taken by IAB at the
3 hospital of Mr. Rodriguez that night?

4 A. Okay.

5 Q. Looking at DEF 1170, you see
6 the injuries on Mr. Rodriguez's right arm,
7 elbow area?

8 A. Yes.

9 Q. Did you ever see that on the
10 scene?

11 A. No.

12 Q. Did you see any injuries on
13 Mr. Rodriguez at the scene?

14 A. Not that I saw.

15 Q. If you had seen that injury,
16 would you have called an ambulance at the
17 scene?

18 A. Yes.

19 Q. Why?

20 A. Because he was injured.

21 Q. Do you know whether or not
22 Mr. Rodriguez was wearing a jacket when he
23 had the collision or if some way it was
24 covered and you couldn't see his arm?

25 A. I don't recall.

1 A. CHEN

2 Q. Just looking at all of the
3 pictures and the various injuries, if you
4 had seen any of those at the scene, would
5 you have called an ambulance?

6 A. Any of these injuries?

7 Q. Yes.

8 A. Usually I would ask if they
9 need an ambulance, but if not, when they go
10 back to the precinct, I'll ask once again,
11 do you need an ambulance.

12 Q. What if you asked someone
13 whether or not they need an ambulance and
14 you saw that kind of injury that you see on
15 DEF 1170 and the person said no, I don't
16 need an ambulance, would you still call an
17 ambulance?

18 A. I would still call an ambulance
19 to have them checked out.

20 Q. Why?

21 A. Just to make sure they are
22 okay.

23 Q. Do you think it was a mistake
24 not to call an ambulance for Mr. Rodriguez
25 at the scene that day?

1 A. CHEN

2 A. Like I said, I didn't see
3 injuries so I didn't even think about
4 calling an ambulance.

5 Q. Why didn't you see the
6 injuries?

7 A. Why?

8 Q. Yes.

9 A. I didn't see them.

10 Q. This individual had just struck
11 a vehicle and fallen to the ground, do you
12 think it would be incumbent upon you as a
13 police officer to check him out and see if
14 he needed medical treatment?

15 A. Yes.

16 Q. It doesn't sound like you did
17 that though, right?

18 A. Because I didn't see the
19 injuries at the scene.

20 Q. Did you speak with him and ask
21 him how he was feeling, is he hurt, does he
22 need treatment?

23 A. I don't recall.

24 Q. Did you ever hear Sergeant
25 Starrantino talk to him about that?

1 A. CHEN

2 A. I don't recall that.

3 Q. Did you ever hear Sergeant
4 Starrantino say he looks fine, take him
5 back to the precinct?

6 A. I didn't hear anything.

7 MS. FETT: Can I have this
8 marked as Plaintiff's Exhibit 8.
9 This is DEF 1174 through 1191. These
10 are photographs.

11 (Whereupon, the aforementioned
12 photographs was marked as Plaintiff's
13 Exhibit 8 for identification, as of
14 this date, by the Reporter.)

15 Q. Take a look through those
16 photographs and let me know when you are
17 ready.

18 A. Yes.

19 Q. Have you seen any of these
20 photographs before?

21 A. No.

22 Q. Does that look like the bicycle
23 that you saw Mr. Rodriguez on on August 13,
24 2015 on the first page?

25 A. Honestly I don't recall the

1 A. CHEN

2 color or the [sic].

3 Q. Do you remember if you
4 Mr. Rodriguez's bike appeared to be damaged
5 at all when you got out of your car that
6 day?

7 A. I don't recall.

8 Q. Moving to DEF 1178, is that a
9 picture or a partial picture of the vehicle
10 that you were in that day?

11 A. Yes.

12 Q. Do you know who the individual
13 is in that picture?

14 A. He looks like the ICO.

15 Q. What's his name?

16 A. Lieutenant Danes.

17 Q. Do you know what he was doing
18 in that picture?

19 A. I don't know because this is
20 the first time that I saw this picture.

21 Q. Did you ever hear about any
22 type of examination of your vehicle being
23 conducted in connection with what happened
24 on August 13, 2015?

25 A. No.

1 A. CHEN

2 Q. See that rear view mirror on
3 the passenger's side, is that what you were
4 talking about earlier in terms of the
5 damage?

6 A. Yes.

7 Q. Was that there -- when did you
8 first notice that damage?

9 A. When -- if you look in my memo
10 book, I believe I said -- that's when I put
11 down 1300.

12 Q. It was when you first started
13 your tour that day?

14 A. No, I think I started my tour
15 at 1100.

16 Q. So it was a few hours after?

17 A. Two hours, right?

18 Q. Yes. Is that exactly what it
19 looked like?

20 A. Yes.

21 Q. Going on to page DEF 1180, is
22 that what the side of your -- strike that.

23 Is that what your door looked
24 like on August 13, 2015 at 1300 hours?

25 A. I don't know. I mean, that

1 A. CHEN

2 looks like the flash from the flashlight,
3 right, because if you look in the mirror,
4 you see the flashlight is shining on the
5 car so that could be the reflection.

6 Q. What I'm referring to actually
7 is the -- do you see the door handle?

8 A. Yes.

9 Q. A little bit below the door
10 handle toward the right, it looks like
11 there's some kind of mark or smudge or
12 something; do you see that?

13 A. I mean it could be a smudge,
14 but it could also be a reflection, right?

15 I don't know.

16 Q. Do you remember seeing anything
17 like that on the door at 1300 hours on
18 August 13, 2015?

19 A. Not that I recall.

20 Q. If you had seen that on the
21 door, would you have noted it in your memo
22 book?

23 A. Yes, possibly, but that doesn't
24 look like -- I mean to me it looks like --
25 I don't know, a smudge or maybe dents or

1 A. CHEN

2 from like debris.

3 Q. On DEF 1181, the next page, I
4 think it's a picture of the same mark, but
5 from a different angle; do you see it
6 toward the top corner of the picture?

7 A. Yes.

8 Q. What does that look like to
9 you?

10 A. Maybe dirt.

11 Q. Any chance that could be a mark
12 or a dent?

13 A. I wouldn't know.

14 Q. Going to DEF 1182, again
15 another angle of the passenger's side door;
16 do you have any understanding of why all of
17 these pictures would be taken of the
18 passenger side door of your vehicle if you
19 never struck Mr. Rodriguez's bicycle?

20 MR. KELLY: Objection. You can
21 answer.

22 A. Can you rephrase that question.

23 Q. Do you know why investigators
24 would be taking pictures of this side of
25 the car if you had not struck

1 A. CHEN

2 Mr. Rodriguez's bicycle?

3 A. They are investigating, right,
4 so that's why they took the pictures, to
5 see if it was struck.

6 Q. Do you think it's possible?

7 A. What's possible?

8 Q. That you struck Mr. Rodriguez's
9 bicycle?

10 MR. KELLY: Objection. You can
11 answer.

12 A. Like I said earlier, I was
13 sitting on the passenger's side. If we
14 would have hit him from where I was
15 sitting, I would feel the impact, but I
16 didn't feel nothing.

17 Q. Because you felt nothing, it's
18 not possible that you ever struck him?

19 A. Yes.

20 Q. You never got to speak to
21 investigators about it; is that right?

22 A. No.

23 Q. Skip ahead to page DEF 1188,
24 looking at the back of the rear view
25 mirror, are those scratches or marks; what

1 A. CHEN

2 is that, do you know?

3 A. I don't know, dirt maybe.

4 Q. Does it look like what your
5 rear view mirror looked like when you first
6 got in the vehicle that day?

7 A. Yes, possibly.

8 Q. How about the section in front
9 of the mirror; it looks like it's partly a
10 flash, but I can't tell if there are marks
11 there. What does that look like to you?

12 A. I don't know. It could be dirt
13 or scratches. I can't tell.

14 Q. Does that look like what it
15 looked like when you got in the car that
16 day?

17 A. Yes, possibly.

18 Q. I'm going to skip ahead --
19 going to DEF 1197 and I know that you
20 haven't seen this picture before, but what
21 does this look like to you?

22 A. I don't know.

23 Q. Assuming that's Mr. Rodriguez's
24 bike, it looks like it's being positioned
25 offly close to the passenger's side of your

1 A. CHEN

2 vehicle; is that fair to say?

3 A. Okay.

4 Q. You see the handle bar and then
5 if you look directly over to the passenger
6 door, it looks like there's a scratch or a
7 scrape there; do you see that?

8 A. Okay.

9 Q. Did you see that when you first
10 got into the car that morning?

11 A. There were dirt on the car so I
12 mean -- honestly if there's dirt or
13 whatever it is, I don't really pay
14 attention to it.

15 Q. What about if it's a scratch or
16 a dent?

17 A. I mean I didn't see the
18 scratch.

19 Q. Going to the next page, it
20 looks like the bike at that point is just a
21 few inches from your vehicle at that point.
22 When you are sitting in the passenger's
23 side on August 13th as you are coming up
24 alongside Mr. Rodriguez, about -- was there
25 ever a time when, I'm not talking about the

1 A. CHEN
2 distance, but I'm talking about the
3 positioning, was there ever a time that
4 Mr. Rodriguez was basically -- you can turn
5 your head and he was right next to you?

6 A. Yes.

7 Q. Was he looking at you at any
8 point when he was right next to you?

9 A. I don't recall.

10 Q. Were you turned and looking at
11 him?

12 A. Yes.

13 Q. Were you in any way trying to
14 communicate with him to tell him to stop?

15 A. I don't recall.

16 Q. Were you saying anything to him
17 when you were positioned right next to him?

18 A. I don't recall.

19 Q. Were you waiving your arm at
20 all trying to get him to stop?

21 A. I don't recall.

22 Q. Do you know if Officer Zheng
23 was honking his horn when you were
24 positioned right next to him?

25 A. Based on my recollection, he

1 A. CHEN

2 was hitting the horn.

3 Q. When you were positioned right
4 next to him, approximately how far were you
5 from his bicycle?

6 A. I'd say possibly three feet or
7 more.

8 Q. Looking at the last picture --
9 I have no further questions on this
10 exhibit.

11 When you were pursuing
12 Mr. Rodriguez, was there at least five-car
13 lengths distance between you and the
14 bicycle when you were pursuing him?

15 A. Possibly, but I can't give you
16 like a definite answer to that because I
17 don't recall.

18 Q. When you pulled up alongside of
19 Mr. Rodriguez's bicycle, was there ever
20 five-car lengths distance between you and
21 his bicycle?

22 A. Five-car lengths?

23 Q. Yes.

24 A. I mean possibly, but I don't
25 recall the actual distance.

1 A. CHEN

2 Q. But it's possible?

3 A. Possible, yes.

4 Q. If you look at the -- I think
5 it's Exhibit 1, the policy. I can show it
6 to you again. If you look at section 15B
7 from Plaintiff's Exhibit 1 where it says do
8 not pass the vehicle that you are pursuing.
9 You and/or Officer Zheng, you didn't comply
10 with the policy when you passed
11 Mr. Rodriguez; is that right?

12 MR. KELLY: Objection. You can
13 answer.

14 A. Do not pass primary vehicle,
15 that's referring to the first vehicle
16 that's in pursuit so it's not -- it doesn't
17 mean the vehicle that you are pursuing.
18 It's the first unit that's actually --
19 yeah.

20 Q. Then it's okay, you can pass a
21 bicycle?

22 A. Based on my experience, yes.

23 Q. When you first got out of your
24 car after Mr. Rodriguez had fallen, I
25 apologize if you already testified about

1 A. CHEN

2 this, when you approached Mr. Rodriguez,
3 was he on the ground or was he standing?

4 MR. KELLY: Objection. You can
5 answer.

6 A. I don't recall exactly whether
7 he was on the ground, but by the time I got
8 up, he got up as well so that's when we
9 made the arrest.

10 Q. Did Mr. Rodriguez ever say to
11 you at the scene that you hit me, you hit
12 me with your car, something to that effect?

13 A. I don't recall.

14 Q. Did he ever say anything like
15 you were trying to hit me, anything like
16 that?

17 A. I don't recall.

18 Q. You said that you never saw him
19 back at the precinct, right?

20 A. No.

21 Q. Did you ever hear on that day
22 that Mr. Rodriguez had said that you tried
23 to hit him with your car?

24 A. No.

25 Q. Did you see Sergeant Cancelino

1 A. CHEN
2 in the 110 that night when you got back to
3 the precinct?

4 A. No.

5 Q. Did you ever talk to Sergeant
6 Cancelino after the arrest of Mr. Rodriguez
7 on August 13, 2015?

8 A. No.

9 MS. FETT: Let's go off the
10 record.

11 THE VIDEOGRAPHER: 1:08 p.m.,
12 going off the record.

13 (Whereupon, an off-the-record
14 discussion was held.)

15 THE VIDEOGRAPHER: Back on the
16 record, 1:26 p.m.

17 MS. FETT: Can we go off the
18 record for a minute.

19 THE VIDEOGRAPHER: 1:27 p.m.,
20 going off the record.

21 (Whereupon, an off-the-record
22 discussion was held.)

23 THE VIDEOGRAPHER: Back on
24 record, 1:28 p.m.

25 Q. Officer Chen, I'm going to show

1 A. CHEN
2 you two videos. First I'm going to play
3 the first one for you and we'll talk about
4 it afterward. Get a little closer to your
5 attorney. Can you see this okay?

6 A. Yes.

7 Q. I'm going to let it play
8 through. It's three minutes and
9 16 seconds.

10 (Whereupon, video was shown to
11 Defendant).

12 Q. Does that look like the video
13 that you've seen before when you were
14 preparing for the deposition?

15 A. Yes.

16 Q. I'm going to play it again and
17 just stop it and ask you some questions.
18 Can you still see it okay?

19 A. Yes.

20 (Whereupon, video was shown to
21 Defendant).

22 Q. At around one minute and
23 2 seconds, you can see the blue vehicle
24 that was pictured in some of the
25 photographs that we looked at being parked.

1 A. CHEN

2 So when I stop it at one minute and
3 17 seconds, do you see your vehicle in the
4 image, in the picture?

5 A. Yes.

6 Q. Do you see Mr. Rodriguez?

7 A. Yes.

8 Q. Do you see the blue vehicle
9 that was parked alongside of the road?

10 A. Yes.

11 Q. Looking at the still image, how
12 far would you say that your vehicle is from
13 Mr. Rodriguez's bicycle?

14 A. Probably two feet, three feet.

15 Q. Would you say that it's less
16 than two feet?

17 MR. KELLY: Objection. You can
18 answer.

19 A. I mean at that angle, I can't
20 tell.

21 Q. How far do you think
22 Mr. Rodriguez is at that point from the
23 blue vehicle?

24 A. Honestly I can't tell from the
25 image.

1 A. CHEN

2 Q. Would you say they are pretty
3 close together?

4 A. Yes.

5 Q. Would you describe this as a
6 safe way to pursue Mr. Rodriguez?

7 A. What do you mean by safe way?

8 Q. Does it look to you like
9 Mr. Rodriguez is being pinned in between
10 your car and the blue car that's parked on
11 the road?

12 A. From the angle, I can't tell.

13 Q. In this still at one minute and
14 17 seconds, it looks like Mr. Rodriguez's
15 bicycle is in the area, in the same area of
16 your vehicle where the investigators were
17 looking at the side of your car, at your
18 door, at your mirror and even placing
19 Mr. Rodriguez's bike exactly in that
20 position; would you agree with that?

21 A. Yes.

22 Q. You don't know why they were
23 doing that?

24 A. I didn't know why they did the
25 investigation. I told you that I didn't

1 A. CHEN

2 see the pictures until today.

3 Q. When you were pursuing
4 Mr. Rodriguez, was he acting in any way
5 threatening at all?

6 A. While he was riding?

7 Q. Yes.

8 A. I didn't see.

9 Q. You didn't what?

10 A. I didn't see meaning like I
11 couldn't tell from the angle when we were
12 following him.

13 Q. Did he appear to be posing any
14 type of a threat while he was riding his
15 bike down 43rd Avenue?

16 A. No.

17 Q. If you're trying to stop a
18 bicyclist that you believe is fleeing from
19 you and he's bicycling in a nonthreatening
20 manner, are you allowed to make contact
21 with the bicyclist with your vehicle to
22 stop him?

23 A. No.

24 Q. Why not?

25 A. Because you would injure the

1 A. CHEN

2 person, something like that.

3 Q. Are you allowed to box them in?

4 A. No.

5 Q. Why not?

6 A. He might get injured like that
7 too as well.

8 Q. How close do you think you can
9 get to a bicyclist in this situation?

10 A. How close?

11 Q. Yes.

12 A. I can't tell you because I
13 wasn't driving.

14 Q. Just generally, if you are
15 pursuing a bicyclist --

16 A. I would go in front of him and
17 get out of my car and stop him.

18 Q. To go in front of him, you
19 would agree that you would have to pass
20 him; is that right?

21 A. Yes.

22 Q. When you are passing the
23 bicyclist, how close can you get to the
24 bicyclist to stop him; what do you think is
25 appropriate?

1 A. CHEN

2 A. What do I think is appropriate?

3 Q. Yes.

4 A. I don't know, one car length,
5 two-car lengths.

6 Q. Looking at this video where I
7 had stopped it before -- stopping it at one
8 minute and 17 seconds, does that look like
9 an appropriate distance from
10 Mr. Rodriguez's bicycle?

11 A. Like I said from that angle, I
12 can't tell how far my car was to him.

13 Q. As you look at this image at
14 one minute and 17 seconds, you can't tell
15 whether or not you're too close to
16 Mr. Rodriguez?

17 A. No.

18 Q. You may be at a safe distance
19 away?

20 A. Yes.

21 Q. Stopping it at one minute and
22 18 seconds as Mr. Rodriguez is -- is it
23 fair to say that it looks like he's falling
24 down to the ground?

25 A. Yes.

1 A. CHEN

2 Q. Can you see where you would
3 have been in the vehicle at that time,
4 right here on the passenger's side?

5 A. I'm on the passenger's side.

6 Q. I believe you testified earlier
7 that you -- when he was alongside of you,
8 you actually saw him; is that right?

9 A. Yes.

10 Q. Is it fair to say that you saw
11 him fall?

12 A. That I didn't see.

13 Q. Why didn't you see that?

14 A. Because it happened so fast.

15 Q. So you never saw him fall?

16 A. No.

17 Q. Were you looking straight ahead
18 at this time?

19 A. Yes.

20 Q. So you stopped looking next to
21 you?

22 A. Yes.

23 Q. If you had seen him fall like
24 this, would you have called an ambulance?

25 A. Only if he wanted an ambulance.

1 A. CHEN

2 Q. If you had seen him fall like
3 that, but he didn't say anything, you
4 wouldn't call an ambulance?

5 A. No, because I didn't see any
6 injuries.

7 Q. What about internal injuries,
8 might you call an ambulance in case there
9 are internal injuries?

10 A. I'm not a doctor. I wouldn't
11 know.

12 Q. I know that you are not a
13 doctor, but if you see someone take a
14 serious fall, but you don't see any
15 bleeding, do you think it might be
16 appropriate to call an ambulance?

17 A. Possibly, yes.

18 Q. When I stopped it again at one
19 minute and 18 seconds, what direction does
20 your car appear to be travelling in?

21 A. Westbound.

22 Q. Does it look like your car is
23 turning in at all towards the curb or just
24 going straight or you can't tell?

25 A. I can't tell.

1 A. CHEN

2 Q. Is that you getting out of the
3 passenger's side?

4 A. Yes.

5 Q. So you go right to cuff him,
6 right?

7 A. That's the thing, I don't
8 recall whether I cuffed him or Officer
9 Zheng cuffed him.

10 Q. I just meant you go directly
11 behind his back; is that right?

12 A. Yes.

13 Q. Do you know if at that point
14 you asked him anything like are you okay?

15 A. I don't recall.

16 Q. Is it fair to say that in the
17 forefront is you and we can barely see
18 Officer Zheng behind you?

19 A. Yes.

20 Q. Is it during that time when you
21 say at some point Mr. Rodriguez is
22 resisting arrest?

23 A. Yes.

24 Q. Did you see him resisting
25 arrest in that clip?

1 A. CHEN

2 A. Yes, he flailed his arms.

3 Q. I want to take you back a
4 little bit and I want you to point out to
5 me when Mr. Rodriguez is flailing his arms.

6 A. Right there.

7 Q. So at one minute and 29 seconds
8 flailing his arms?

9 A. Yes.

10 Q. How is he doing that?

11 A. He was pretty much -- he won't
12 let us grab his arms. He's moving it
13 forward and backwards I guess from the
14 video.

15 Q. Is he ever losing consciousness
16 or getting dizzy as you're trying to cuff
17 him?

18 A. No.

19 Q. How do you know that?

20 A. This is -- you're asking me
21 based on the video?

22 Q. No, if it jogs your memory of
23 him losing consciousness or getting dizzy?

24 A. Oh, no.

25 Q. From what you've seen so far in

1 A. CHEN
2 the video, is Mr. Rodriguez obstructing
3 traffic?

4 A. No.

5 Q. Is your vehicle obstructing
6 traffic?

7 A. No, because we were at an
8 angle.

9 Q. Do you know that Mr. Rodriguez
10 was interviewed when he was taken back to
11 the 110th Precinct that afternoon?

12 A. I don't know.

13 Q. Do you know that he was
14 interviewed before he was ever taken for
15 medical treatment?

16 A. I don't know.

17 Q. If I were to tell you that's
18 what happened, does that sound appropriate?

19 MR. KELLY: Objection. You can
20 answer.

21 A. Interviewed by who?

22 Q. Investigators about what
23 happened.

24 A. I mean possibly, yes.

25 Q. Before taking him for medical

1 A. CHEN

2 treatment?

3 A. Well I don't know because like
4 I said, I wasn't at the precinct.

5 Q. At this part, we're at two
6 minutes, is this you standing right by
7 Mr. Rodriguez?

8 A. Yes.

9 Q. What are you doing at this
10 point?

11 A. Maybe I was asking him stuff.

12 Q. But you don't have a specific
13 recollection?

14 A. No.

15 Q. You see at around two minutes
16 and 44 seconds, cars are starting to get a
17 little congested here and people are
18 starting to gather; do you see that?

19 A. Yes.

20 Q. Is that Mr. Rodriguez causing
21 that?

22 MR. KELLY: Objection. You can
23 answer.

24 A. Can you rephrase that question.

25 Q. Is Mr. Rodriguez causing this

1 A. CHEN

2 crowd to gather?

3 MR. KELLY: Objection. You can
4 answer.

5 A. He was under arrest at this
6 time so I guess people started to see
7 what's going on.

8 Q. I'm trying to find out where he
9 had committed disorderly conduct as we are
10 watching this video. It looks like your
11 vehicle is causing the traffic and he's
12 sitting there handcuffed so just tell me if
13 there's anywhere as you're watching you see
14 him engaging in disorderly conduct?

15 A. At this point, no.

16 Q. Do you see how he's kind of
17 laying back and moving around; does that
18 refresh your recollection as to why he was
19 doing that?

20 A. No.

21 Q. Now I'm going to show you a
22 second video. It's very brief. I'll play
23 it for you first. Unfortunately the only
24 way I have this video is with a page, a
25 page right next to it so you're welcome to

1 A. CHEN

2 look at that, but you don't have to.

3 Really what I want you to focus on is the
4 video and it's not the clearest video, but
5 just take a look at it.

6 (Whereupon, video was shown to
7 Defendant).

8 Q. Have you seen that video
9 before?

10 A. Yes.

11 Q. I'm going to go through it
12 again and ask you a couple of questions.
13 Can you still see it okay?

14 A. Yes.

15 Q. Can you tell who this officer
16 is right here?

17 A. I can't tell.

18 Q. If I were to say that Sergeant
19 Starrantino thought that that might be him,
20 does that help you to possibly identify
21 him?

22 A. No.

23 Q. Let's say this is Sergeant
24 Starrantino, do you know if this is you and
25 Officer Zheng right here?

1 A. CHEN

2 A. I can't tell.

3 Q. I'm at about 15 seconds on this
4 video, you see right here, what does that
5 look like to you; what is that officer
6 holding?

7 A. A bag.

8 Q. Does it look like
9 Mr. Rodriguez's backpack?

10 A. I don't know.

11 Q. Can you tell if that's you or
12 Officer Zheng or another officer?

13 A. I can't tell.

14 Q. At this point, at 21 seconds,
15 what does it look like the officer is doing
16 with the bag?

17 A. They were holding the bag.

18 Q. Does it look like there is a
19 search being conducted?

20 A. No.

21 Q. Definitely not?

22 A. No.

23 Q. The officer that's with him,
24 with the officer holding the bag, is that
25 you; do you recognize that to be you or you

1 A. CHEN

2 can't tell?

3 A. I can't tell.

4 Q. How about this officer in the
5 forefront, can you tell who that is?

6 A. No.

7 Q. The officer that's holding the
8 bag and the other officer next to him, is
9 that your vehicle in the center of the
10 picture?

11 A. I believe so, but I'm not
12 100 percent sure.

13 Q. What did it look like the
14 officer was just doing with the bag at that
15 point at 24 seconds?

16 A. I really can't tell.

17 Q. Does it look like the bag is
18 being placed on top of the hood of the car?

19 A. Possibly, but I still can't
20 tell from the video.

21 Q. Do you see anything that looks
22 like a search to you -- I'm going to go
23 back -- do you see anything that looks like
24 a possible search?

25 A. No.

1 A. CHEN

2 Q. As this person is walking with
3 the bag, can you tell if that's you or
4 Officer Zheng or someone else?

5 A. I can't tell.

6 Q. That's at 28 seconds. As they
7 are walking away, the one on the left has
8 the bag and the one on the right doesn't.
9 Do you know whether or not that's either
10 you or Officer Zheng on the left or the
11 right?

12 A. I can't tell.

13 Q. That's at 30 seconds. How is
14 it decided that you would go back out on
15 your summons patrol after that? I think I
16 asked you that, do you decide that or
17 Sergeant Starrantino tells you or something
18 else?

19 A. No, I went out because that was
20 my duty to write the summonses.

21 Q. When you went back out, did you
22 take the same vehicle that you were in with
23 Officer Zheng that day or a different
24 vehicle?

25 A. Yes, the same vehicle.

1 A. CHEN

2 Q. What's the number of that
3 vehicle?

4 A. 447.

5 Q. You continued driving 447 for
6 the rest of the day?

7 A. Yes.

8 Q. No one ever asked you, no
9 investigators or anyone else asked you to
10 take a look at the vehicle while you had
11 it; is that right?

12 A. Yes, nobody.

13 Q. Just going back briefly to the
14 CCRB interview that you mentioned, I'm
15 going to read to you just a portion of your
16 interview and then I'm going to ask you a
17 question.

18 So your interview at CCRB was
19 conducted on September 23, 2015, and -- so
20 at page six of the transcript, you're
21 basically talking about what happened and
22 then you say at page seven line three, you
23 say "so finally we cuffed him and you know,
24 we asked him why did you run, I mean, you
25 know, why did you run away so I'm checking

1 A. CHEN
2 his bags and I found over a possible
3 marijuana so now I realized why he, you
4 know, fled" so I guess I'm wondering why
5 there's any confusion by your testimony by
6 the ADA or anyone else?

7 A. What do you mean by confusion?

8 Q. It sounds to me that you are
9 checking the bag at the scene?

10 A. Like I said, I gave a brief
11 summary of what happened and it wasn't in
12 chronical -- chronological order, but I
13 never actually checked the bag. It was a
14 summary of what had happened.

15 Q. So you say "we finally cuff
16 him" which we saw in the video and "we
17 asked him why did you run and so I'm
18 checking his bags and I find marijuana" so
19 first of all, it sounds very clear, you're
20 the one checking his bags; do you agree
21 with that?

22 A. Yes, it sounds like it, but
23 like I told you, it was a summary. It was
24 a complete summary.

25 Q. When I read it, it sounds like

1 A. CHEN

2 you're the one checking it when he is
3 handcuffed?

4 A. I didn't check it. I didn't
5 touch -- I possibly might have touched the
6 bag, but I didn't look inside.

7 Q. Do you think this is a mistake,
8 your testimony?

9 A. It's a mistake because I wasn't
10 precise with the CCRB when I explained to
11 them.

12 Q. Did you ever contact the
13 investigator at CCRB and say hey, I made a
14 mistake in my testimony and I need to fix
15 this?

16 A. No.

17 Q. Looking back on everything that
18 happened on August 13, 2015, is there
19 anything that you would have done
20 differently?

21 A. What do you mean?

22 Q. In terms of pursuing
23 Mr. Rodriguez, would you have done it any
24 differently?

25 A. No, we would have followed him

1 A. CHEN

2 anyway, we would have stopped the car, came
3 out of the car to signal him to stop and
4 issued a summons.

5 Q. Would you have followed him
6 exactly the same way you did on August 13,
7 2015?

8 A. I wasn't driving so I can't
9 tell you.

10 Q. Let's say you were the driver
11 that day, would you have driven the car the
12 same way we saw it driven by Officer Zheng
13 on August 1, 2015?

14 A. Honestly I wouldn't know
15 because the situation might have been
16 different so I can't.

17 Q. I'm saying it's going to be the
18 exact same situation. I'm saying let's
19 look at the exact same circumstances, would
20 you have done the pursuit the same way?

21 A. I mean there's no other way to
22 really do it because we were just following
23 him to try to have him stop.

24 Q. How about keeping a safer
25 distance?

1 A. CHEN

2 A. We were at a safe distance.

3 Q. So that to you was proper
4 police procedure?

5 A. Like I said, from the angle, I
6 can't really describe to you how close we
7 were. We did pass him at one point so
8 therefor, by the time we passed him, we
9 wanted to stop to make sure we can get out
10 of the car and have him stop as well.

11 Q. When you look at that video,
12 does that look like proper police procedure
13 to you?

14 A. I don't make the rules for the
15 NYPD so I can't tell you.

16 Q. When you look at that video,
17 does it look like proper police procedure,
18 I'm not asking about making policy, I'm
19 asking as a police officer, does it look
20 like an appropriate pursuit?

21 A. Yes.

22 Q. Would you have changed anything
23 that you had done that day; aside from the
24 pursuit, how about after the fact in terms
25 of failing to ever get Mr. Rodriguez

1 A. CHEN

2 medical treatment at the scene, would you
3 have done something different?

4 A. If I saw the injuries, yes, I
5 would have called the ambulance right away.

6 Q. What do you think of Officer
7 Zheng; do you have an opinion of him as a
8 driver, do you think he's a good driver, a
9 bad driver or something else?

10 A. He's a good driver.

11 MS. FETT: Nothing further.

12 THE VIDEOGRAPHER: 1:58 p.m.

13 This concludes today's deposition of
14 Alen Chen and we are now off the
15 record.

16 (Whereupon, at 2:00 P.M., the
17 Examination of this witness was
18 concluded.)

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A. CHEN

D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

ALAN CHEN

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

1 A. CHEN

2 E X H I B I T S

3

4 PLAINTIFF'S EXHIBITS:

5

6	EXHIBIT	EXHIBIT	PAGE
7	NUMBER	DESCRIPTION	
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18

19 (Exhibits retained by Counsel.)

20

21 I N D E X

22

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24	MS. FETT	5
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25

1 A. CHEN

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)
5 : SS.:
6 COUNTY OF KINGS)

7

8 I, MILA GUTMAN AZIMOV, a Notary Public
9 for and within the State of New York, do
10 hereby certify:

11 That the witness whose examination is
12 hereinbefore set forth was duly sworn and
13 that such examination is a true record of
14 the testimony given by that witness.

15 I further certify that I am not related
16 to any of the parties to this action by
17 blood or by marriage and that I am in no
18 way interested in the outcome of this
19 matter.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand this 11th day of August 2018.

22

23

24

25

Mila Gutman Azimov

MILA GUTMAN AZIMOV

A. CHEN

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Diamond Errata Sheet

Plaintiff(s): _____

Defendant(s): _____

[illegible]

Date: _____

Name of Witness:

Signature:

Subscribed and sworn to before me

This _____ of _____ 20____.

Notary Public